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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 25, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02–111–2]

Tuberculosis; Amend the Definition of Affected Herd

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by removing the two different definitions of *affected herd* and replacing them with a single, updated definition. This action is necessary to provide more clarity in the regulations and because the current definitions are out-of-date and inconsistent.

EFFECTIVE DATE: November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, Director, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations, restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart A of part 77 (§§ 77.1–77.4) contains general provisions of the tuberculosis regulations such as definitions; subpart B (§§ 77.5–77.19) contains specific provisions regarding cattle and bison; and subpart C (§§ 77.20–77.41) contains specific provisions regarding captive cervids.

There have been two definitions of *affected herd* in part 77. In § 77.5, *affected herd* has been defined as ''a herd in which tuberculosis has been disclosed in any cattle or bison by an official tuberculin test or by post mortem examination.'' In § 77.20, *affected herd* has been defined as ''a herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.39(d) of this part.''

On July 2, 2004, we published in the **Federal Register** (69 FR 40329–40330, Docket No. 02–111–1) a proposal to amend the regulations by removing the two inconsistent definitions of *affected herd* from §§ 77.5 and 77.20 and replacing them with a new definition of the term that would apply to cattle, bison, and captive cervids. Our proposed new definition read as follows: ''A herd of livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: Epidemiologic evidence, histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or association with known sources of infection.''

We solicited comments concerning our proposal for 60 days ending August 31, 2004. We received three comments by that date. They were from a State government official and two private citizens. The comments are discussed below.

One commenter stated that the ''strong and substantial evidence'' standard in the proposed definition was too high and that potentially infected animals could remain unidentified as a result. We disagree and believe that the new definition will actually increase the likelihood that the disease will be detected. For example, under the new definition, cervid herds can be classified as affected without first having a diagnosis of tuberculosis confirmed through a culture—a procedure that can be difficult and usually requires at least 8 to 12 weeks to complete. With respect to cattle, the new definition provides that a herd can be classified as affected based on broader criteria than under the definition in § 77.5, which provided that a diagnosis could only be made when an official test or a post mortem examination was conducted. Therefore, we expect that the new definition will eliminate time constraints, confusion, and differing standards between cattle, bison, and cervids. The new definition also will expand the types of evidence or information that can be considered by a professional veterinary diagnostician when examining herds. Moreover, a designated tuberculosis epidemiologist (DTE), which is already defined in § 77.2, is designated by the Administrator of the Animal and Plant Health Inspection Service to use and interpret diagnostic tests for tuberculosis and the management of tuberculosis affected herds. Thus, a DTE has the expertise necessary to appropriately apply the new definition.

A second commenter suggested that the words ''in domestic livestock'' should be added to the definition after the words ''association with known sources of infection.'' We disagree and believe that this language would hinder the diagnosis of tuberculosis as it would eliminate consideration of contacts with infected animals outside of domestic livestock, such as wild animals. For example, in Michigan, wild deer have passed tuberculosis to domestic livestock. Under such circumstances, the suggested limiting language might prevent the introduction of evidence indicating tuberculosis in wildlife populations and possibly slow or deter the detection of the disease in regulated animals.

Another commenter pointed out that the definition in the proposed rule differed slightly from the definition of *affected herd* set forth in a draft update of the UMR, that is currently under consideration. The commenter suggested that we revise the definition in the regulations to match the definition of *affected herd* in the draft UMR update. We agree that the definitions in the regulations and the draft UMR update should be the same. In this final rule, we have slightly modified the definition so that it refers to ''epidemiologic evidence such as contact with known sources of infection'' rather than naming ''epidemiologic evidence'' and ''association with known sources of infection'' as separate considerations. The definition as presented in this final

rule will be added to the draft UMR update.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the tuberculosis regulations by removing the two different definitions of *affected herd* and replacing them with a single, updated definition. This action is necessary because the definitions that have appeared in the regulations are out-of-date and inconsistent. This action will provide more clarity to the regulations.

No economic benefits or costs are associated with this action, which would simply update and clarify our definition of *affected herd.* This action would have no effect on small entities, other Federal agencies, State governments, or local governments.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 77.2 is amended by adding, in alphabetical order, a definition of *affected herd* to read as follows:

§ 77.2 Definitions.

* * * * *

Affected herd. A herd of livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: Histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or epidemiologic evidence such as contact with known sources of infection.

* * * * *

§§ 77.5 and 77.20 [Amended]

■ 3. Sections 77.5 and 77.20 are amended by removing the definitions of *affected herd.*

Done in Washington, DC, this 14th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–20974 Filed 10–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21529; Airspace Docket No. 05–AAL–19]

Revision of Class E Airspace; Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Yakutat, AK to provide adequate controlled airspace to contain aircraft executing three new Standard Instrument Approach Procedures (SIAPs), seven existing SIAPs and one revised Departure Procedure. This rule results in new Class E airspace upward from 1,200 feet (ft.) above the surface at Yakutat, AK. The existing airspace upward from 700 ft. above the surface is not changed.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Friday, June 24, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Yakutat, AK (70 FR 36542). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing three new SIAPs, seven revised SIAPs and one revised departure procedure for the Yakutat Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, original; (2) RNAV (GPS) RWY 11, orig.; and (3) RNAV (GPS) RWY 29, orig. The seven revised SIAPs are (1) Direction Finder (DF) RWY 11, amendment (AMDT) 3, (2) Instrument Landing System (ILS) or Localizer (LOC)-Distance Measuring Equipment (DME) RWY 11, orig., (3) LOC–DME-Back Course RWY 29, AMDT 3, (4) Non-directional Radio Beacon RWY 11, AMDT 3, (5) Very High Frequency Omnidirectional Range (VOR)–DME RWY 02, AMDT 2, (6) VOR–DME RWY 11, AMDT. 1, and (7) VOR–DME RWY 29, AMDT 1. The Departure Procedure is the FAKES–TWO, AMDT 1. Revised Class E controlled airspace extending upward from 700 ft. above the surface in the Yakutat Airport area is revised by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E

airspace designation listed in this document will be published subsequently in the Order. The Notice of Proposed Rulemaking (NPRM) originally listed the airport position coordinates incorrectly. Additionally, the airspace description was incomplete. This action corrects these errors. The rule describes exclusions to airspace outside 12 miles from the shoreline. These exclusions will be addressed by another rulemaking action, which will provide the necessary controlled airspace for the SIAPs at Yakutat. Those changes will affect the Offshore Airspace Areas; Gulf of Alaska Low and Control 1487L.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Yakutat, Alaska. This Class E airspace is revised to accommodate aircraft executing three new SIAPs, seven revised SIAPs, one revised departure procedure and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Yakutat Airport, Yakutat, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Yakutat Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Yakutat, AK [Revised]

Yakutat Airport, AK
(Lat. 59°30′12″ N., long. 139°39′37″ W.)

That airspace extending upward from 700 feet above the surface within the area bounded by lat. 59°47′42″ N. long. 139°58′48″ W. to lat. 59°37′33″ N. long. 139°40′53″ W. then along the 7-mile radius of the Yakutat VORTAC clockwise to lat. 59°28′54″ N. long. 139°25′35″ W. to lat. 59°20′16″ N. long. 139°10′20″ W. to lat. 59°02′49″ N. long. 139°47′45″ W. to lat. 59°30′15″ N. long. 140°36′43″ W. to the point of beginning excluding the area outside 12 miles from the shoreline; and that airspace extending upward from 1,200 feet above the surface within the area bounded by lat. 59°00′00″ N. long. 141°10′00″ W. by lat. 59°50′00″ N. long. 141°00′00″ W. by lat. 60°05′00″ N. long. 140°30′00″ W. by lat. 60°10′00″ N. long. 139°30′00″ W. by lat. 59°30′00″ N. long. 138°15′00″ W. by lat. 59°00′00″ N. long. 138°35′00″ W. by lat. 58°40′00″ N. long. 139°30′00″ W. to the point of beginning; and within 5.6 miles each side of the Yakutat VORTAC 112° radial to 65 miles southeast of the VORTAC excluding the area outside 12 miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on October 7, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Service Operations.

[FR Doc. 05–21002 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30461; Amdt. No. 3137]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 20, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 2005.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 7, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV, SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
09/23/05 ...	AL	Huntsville	Huntsville Intl—Carl T. Jones Field	FDC 5/8672	VOR–A, Amdt 12A.
09/26/05 ...	ND	Fargo	Hector Intl	FDC 5/8737	ILS or LOC Rwy 36, Orig-A.
09/27/05 ...	IN	South Bend	South Bend Regional	FDC 5/8745	ILS or LOC Rwy, 27L, Amdt 35A.
09/28/05 ...	MO	Columbia	Columbia Regional	FDC 5/8871	VOR Rwy 13, Amdt 3A.
09/29/05 ...	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 5/8891	ILS PRM Rwy 12L, Amdt 4A.
09/29/05 ...	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 5/8892	ILS PRM Rwy 12R, Amdt 3A.

FDC date	State	City	Airport	FDC No.	Subject
09/29/05 ...	AK	Chevak	Chevak	FDC 5/8907	RNAV (GPS) Rwy 14, Orig-A.
09/29/05 ...	AK	Chevak	Chevak	FDC 5/8908	RNAV(GPS) Rwy 32, Orig-A.
09/29/05 ...	AK	Dillingham	Dillingham	FDC 5/8909	RNAV (GPS), Rwy 19, Orig-B.
09/29/05 ...	AK	Dillingham	Dillingham	FDC 5/8910	LOC/DME Rwy 19, Amdt 5A.
09/29/05 ...	AK	Dillingham	Dillingham	FDC 5/8911	VOR/DME Rwy 19, Amdt 6A.
09/29/05 ...	AK	Dillingham	Dillingham	FDC 5/8912	VOR Rwy 1, Amdt 8A.
09/29/05 ...	AK	Dillingham	Dillingham	FDC 5/8913	NDB Rwy 1, Amdt 1A.
10/05/05 ...	AR	Jonesboro	Jonesboro Muni	FDC 5/8965	ILS or LOC Rwy 23, Orig-B.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8969	RNAV (GPS) Rwy 26, Orig-A.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8970	VOR/DME Rwy 8, Amdt 4A.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8972	VOR/DME Rwy 26, Amdt 3A.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8974	ILS or LOC/DME Rwy 8, Orig-A.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8975	VOR/DME Z Rwy 26, Orig-A.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8976	VOR RWY 8, AMDT 3b.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8977	VOR/DME Y Rwy 26, Orig-A.
09/30/05 ...	AK	Kotzebue	Ralph Wien Memorial	FDC 5/8978	RNAV (GPS) Rwy 8, Orig-A.
10/03/05 ...	ID	Coeur D'Alene	Coeur D'Alene Air Terminal	FDC 5/9037	ILS Rwy 5, Amdt 4B.
10/05/05 ...	IA	Des Moines	Des Moines Intl	FDC 5/9052	RNAV (GPS) Rwy 23, Orig A.
10/05/05 ...	IA	Des Moines	Des Moines Intl	FDC 5/9053	VOR/DME Rwy 23, Orig A.
10/05/05 ...	IA	Red Oak	Red Oak Muni	FDC 5/9054	NDB Rwy 17, Amdt 8A.
10/05/05 ...	IA	Mason City	Mason City Muni	FDC 5/9056	VOR Rwy 36, Amdt 6A.
10/05/05 ...	IA	Mason City	Mason City Muni	FDC 5/9057	ILS or LOC Rwy 36, Amdt 6B.
10/05/05 ...	IA	Mason City	Mason City Muni	FDC 5/9058	VOR Rwy 18, Amdt 4A.
10/05/05 ...	IA	Mason City	Mason City Muni	FDC 5/9060	LOC BC Rwy 18, Amdt 6A.
10/05/05 ...	OK	Norman	University of Oklahoma Westheimer	FDC 5/9084	LOC Rwy 3, Amdt 3F.
10/05/05 ...	OK	Norman	University of Oklahoma Westheimer	FDC 5/9086	NDB Rwy 3, Orig-A.
10/05/05 ...	OK	Norman	University of Oklahoma Westheimer	FDC 5/9088	VOR/DME RNAV,Rwy 3, Orig-G.
10/05/05 ...	OK	Norman	University of Oklahoma Westheimer	FDC 5/9092	NDB Rwy 35, Orig-A.
10/05/05 ...	OK	Blackwell	Blackwell	FDC 5/9094	VOR–A, Amdt 3A.
10/04/05 ...	AK	Barrow	Wiley Post-Will Rogers Memorial	FDC 5/9104	VOR/DME Rwy 24, Amdt 1A.
10/04/05 ...	AK	Barrow	Wiley Post-Will Rogers Memorial	FDC 5/9106	RNAV (GPS) Rwy 6, Orig-A.
10/04/05 ...	AK	Barrow	Wiley Post-Will Rogers Memorial	FDC 5/9107	LOC/DME BC Rwy 24, Amdt 3B.
10/04/05 ...	AK	Barrow	Wiley Post-Will Rogers Memorial	FDC 5/9108	GPS Rwy 24, Orig-B.
10/04/05 ...	MN	Glenwood	Glenwood Muni	FDC 5/9123	VOR Rwy 33, Amdt 2A.
10/04/05 ...	MN	International Falls	International Falls	FDC 5/9124	ILS or LOC Rwy 31, Amdt 8A.
10/04/05 ...	WA	Tacoma	Tacoma Narrows	FDC 5/9127	GPS Rwy 17, Orig-A.
10/04/05 ...	WA	Tacoma	Tacoma Narrows	FDC 5/9129	NDB Rwy 35, Amdt 7B.
10/04/05 ...	WA	Tacoma	Tacoma Narrows	FDC 5/9130	GPS Rwy 35, Orig-A.
10/04/05 ...	MN	Rochester	Rochester intl	FDC 5/9144	VOR Rwy 2, Amdt 17A.
10/05/05 ...	OK	Claremore	Claremont Regional	FDC 5/9156	VOR/DME–B Amdt 3A.
10/05/05 ...	OK	Cushing	Cushing Muni	FDC 5/9158	NDB Rwy 36, Amdt 4A.

FDC date	State	City	Airport	FDC No.	Subject
10/05/05 ...	SD	Rapid City	Rapid City Regional	FDC 5/9164	VOR or TACAN Rwy 24, Orig-D.
10/05/05 ...	SD	Rapid City	Rapid City Regional	FDC 5/9165	VOR or TACAN Rwy 32, Amdt 24D.
10/05/05 ...	KS	Wichita	Wichita Mid-Continent	FDC5/9177	ILS or LOC Rwy 1L (Cat 1), ILS Rwy 1L (Cat 11), Amdt 3A.
10/05/05 ...	KS	Wichita	Wichita Mid-Continent	FDC5/9178	ILS or LOC Rwy 19R, Amdt 5A.
10/05/05 ...	KS	Wichita	Wichita Mid-Continent	FDC5/9179	VOR Rwy 14, Amdt 1C.
10/05/05 ...	AK	Dillingham	Dillingham	FDC 5/9187	RNAV (GPS) Rwy 1, Orig-A.
10/05/05 ...	AK	St Mary's	St Mary's	FDC 5/9189	RNAV (GPS) Rwy 16, Orig-A.
10/05/05 ...	AK	Iliamna	Iliamna	FDC 5/9191	RNAV (GPS) Rwy 7, Amdt 1A.
10/05/05 ...	AK	Iliamna	Iliamna	FDC 5/9192	RNAV (GPS) Rwy 17, Orig-A.
10/05/05 ...	AK	Iliamna	Iliamna	FDC 5/9195	RNAV (GPS) Rwy 35, Orig-A.
10/05/05 ...	AK	Barrow	Wiley Post-Will Rogers Memorial	FDC 5/9200	ILS or LOC/DME Rwy 6, Orig-A.
10/05/05 ...	LA	Shreveport	Shreveport Downtown	FDC 5/9202	LOC Rwy 14, Amdt 4D.
10/05/05 ...	MN	Duluth	Duluth Intl	FDC 5/9203	ILS or LOC Rwy 27, Amdt 8B.
10/05/05 ...	KS	Salina	Salina Muni	FDC 5/9207	ILS or LOC Rwy 35, Amdt 19A.
10/05/05 ...	KS	Salina	Salina Muni	FDC 5/9208	VOR Rwy 17, Amdt 1A.
10/05/05 ...	KS	Salina	Salina Muni	FDC 5/9209	NDB Rwy 35, Amdt 17A.
10/05/05 ...	IA	Harlan	Harlan Muni	FDC 5/9224	NDB Rwy 33, Amdt 5A.
10/05/05 ...	IA	Muscatine	Muscatine Muni	FDC 5/9225	VOR Rwy 6, Orig-B.
10/05/05 ...	IA	Mason City	Mason City Muni	FDC 5/9226	RNAV (GPS) Rwy 18, Orig A.
10/05/05 ...	IA	Muscatine	Muscatine Muni	FDC 5/9227	VOR Rwy 24, Orig-B.
10/05/05 ...	IA	Mason City	Mason City Muni	FDC 5/9228	RNAV (GPS) Rwy 36, Orig A.
10/05/05 ...	LA	Rayville	Rayville/John H Hooks Jr Memorial	FDC 5/9231	RNAV (GPS) Rwy 36, Orig-A.
10/05/05 ...	MN	Duluth	Duluth Intl	FDC 5/9236	Copter ILS or LOC Rwy 27, Orig-A.
10/05/05 ...	KS	Hays	Hays Regional	FDC 5/9238	ILS or LOC Rwy 34, Orig-C.
10/05/05 ...	OK	Clinton	Clinton Sherman	FDC 5/9239	VOR Rwy 35L, Amdt 11D.
10/05/05 ...	OK	Clinton	Clinton Sherman	FDC 5/9243	ILS or LOC Rwy 17R, Amdt 7A.
10/05/05 ...	LA	Lake Charles	Lake Charles Regional	FDC 5/9263	Radar 1, Amdt 5A.

[FR Doc. 05–20849 Filed 10–19–05; 8:45 am]
BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–52602]

Adoption of Amendment to Delegation of Authority to Secretary of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its Delegation of Authority to Secretary of the Commission to permit the Secretary to waive the bond requirement set forth in the Rules on Fair Fund and Disgorgement Plans if the fair or disgorgement funds are held at the U.S. Department of the Treasury (''Treasury'') and will be disbursed by the Treasury. This amendment is intended to enhance efficient processing of disgorgement/fair fund plans and to lower the cost of plan administration.

DATES: Effective November 21, 2005.

FOR FURTHER INFORMATION CONTACT: J. Lynn Taylor, Assistant Secretary, Office of the Secretary 202–551–5400.

SUPPLEMENTARY INFORMATION: The amendment is technical and procedural in nature.

I. Discussion

The Commission has delegated authority to the Secretary to issue orders approving proposed fair fund and disgorgement plans following publication if no negative comments are received.[1] Rule 1105(c) of the Commission's Rules on Fair Fund and

[1] 17 CFR 200.30–7(a)(11).

Disgorgement Plans requires that third-party administrators obtain a bond to protect against risk of loss of fair and disgorgement funds.[2] Obtaining a bond for funds which will be administered by a third party, but held at Treasury and disbursed by Treasury, is neither necessary nor cost efficient because these funds will not be subject to the risks of loss or other dissipation that could occur were the funds held by a private entity. Because of this, the Commission is adopting amended Rule 30–7(a)(11) to permit the Secretary to waive the bond requirement if the funds are held at Treasury, and Treasury is distributing the funds. Nevertheless, the staff may submit plans to the Commission for consideration, as it deems appropriate.

II. Administrative Procedure Act, Regulatory Flexibility Act and Paperwork Reduction Act

The Commission finds, in accordance with Section 533(b)(3)(A) of the Administrative Procedure Act,[3] that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for public comment. The Regulatory Flexibility Act[4] therefore does not apply. Because the rule relates to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' it is not subject to the Small Business Regulatory Enforcement Fairness Act.[5]

These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[6]

III. Costs and Benefits of the Amendment

The amendment is procedural and administrative in nature. The benefits to the parties are efficiency and fairness. The cost of the amendment, if any, falls on the Commission, not the parties.

IV. Effect on Efficiency, Competition, and Capital Formation

The amendment is procedural and administrative in nature and will enhance the efficiency of the approval process for disgorgement/fair fund plans. It will have no effect on competition or capital formation.

V. Statutory Basis and Text of Proposed Amendment

This amendment to Rule 30a–7 is being adopted pursuant to statutory authority granted to the Commission in Section 4A of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78d–1.

List of Subjects in 17 CFR Part 200

Authority delegation (Government agencies).

Text of the Adopted Rule

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–7 is amended by adding a sentence after the first sentence in paragraph (a)(11) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(11) * * * As part of this plan approval, the requirement set forth in Rule 1105(c) (§ 201.1105(c) of this chapter) may be waived if the fair or disgorgement funds are held at the U.S. Department of the Treasury and will be disbursed by Treasury. * * *

* * * * *

Dated: October 13, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–20973 Filed 10–19–05; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 201.1105(c). The cost of the bond may be paid as a cost of administration. The rule permits the Commission to waive the bond for good cause shown.

[3] 5 U.S.C. 553(b)(3)(A).

[4] 5 U.S.C. 601 *et seq.*

[5] 5 U.S.C. 804(3)(C).

[6] 44 U.S.C. 3501 *et seq.*

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 05–33]

RIN 1505–AB61

Extension of Import Restrictions Imposed on Certain Categories of Archaeological Material From the Pre-Hispanic Cultures of the Republic of Nicaragua

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Final rule.

SUMMARY: This document amends Title 19 of the Code of Federal Regulations (19 CFR) to reflect the extension of the import restrictions on certain categories of archaeological material from the Pre-Hispanic cultures of the Republic of Nicaragua that were imposed by T.D. 00–75. The Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and Title 19 of the CFR is being amended to reflect this extension. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 00–75 contains the Designated List of archaeological material representing Pre-Hispanic cultures of Nicaragua.

DATES: *Effective Date:* October 20, 2005.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George McCray, (202) 572–8710. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 344–1684.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19

U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Nicaragua on October 20, 2000, concerning the imposition of import restrictions on certain categories of archeological material from the Pre-Hispanic cultures of the Republic of Nicaragua. On October 26, 2000, Customs and Border Protection (CBP) published T.D. 00–75 in the **Federal Register** (65 FR 64140), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of articles covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are ''effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists'' (19 CFR 12.104g(a)).

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of Nicaragua continues to be in jeopardy from pillage of Pre-Hispanic archaeological resources, made the necessary determination to extend the import restrictions for an additional five years on September 1, 2005. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The Designated List of Pre-Columbian (Pre-Hispanic) Archaeological Materials from Nicaragua covered by these import restrictions is set forth in T.D. 00–75. The Designated List and accompanying image database may also be found at the following Internet Web site address: *http://exchanges.state.gov/culprop*. The restrictions on the importation of these archaeological materials from the Republic of Nicaragua are to continue in effect for an additional 5 years. Importation of such material continues to be restricted unless:

(1) Accompanied by appropriate export certification issued by the Government of Nicaragua; or

(2) With respect to Pre-Columbian material from archaeological sites throughout Nicaragua, documentation exists that exportation from Nicaragua occurred prior to October 26, 2000.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

■ For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104 [Amended]

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Nicaragua by removing the reference to ''T.D. 00–75'' in the column headed ''Decision No.'' and adding in its place the language ''T.D. 00–75 extended by CBP Dec. 05–33''.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

Approved: October 17, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–21049 Filed 10–19–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–098]

RIN 1625–AA08

Special Local Regulations for Marine Events; Willoughby Bay, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for ''Hampton Roads Sailboard Classic'', a marine event to be held on the waters of Willoughby Bay, Norfolk, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Willoughby Bay during the event.

DATES: This rule is effective from 9 a.m. on October 29, 2005 to 5 p.m. on October 30, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–098 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 2, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Willoughby Bay, Norfolk, VA'' in the **Federal Register** (70 FR 52338). We

received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying its effective date would be contrary to public interest, since immediate action is needed to protect event participants, spectator craft and other vessels transiting the event area from the dangers of high-speed power boats racing. However advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

On October 29 and 30, 2005, the Windsurfing Enthusiasts of Tidewater will sponsor the ''Hampton Roads Sailboard Classic'', on the waters of Willoughby Bay, Norfolk, Virginia. The event will consist of approximately 30 sailboards racing in heats along several courses within Willoughby Bay. Spectator vessels are anticipated to gather near the event site to view the competition. To provide for the safety of event participants, spectators and transiting vessels during the event, the Coast Guard will temporarily restrict vessel movement in the event area during the sailboard races.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Willoughby Bay. Since no comments were received, no changes to this regulation were made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a segment of Willoughby Bay during the event, the impact of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of Willoughby Bay during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Transiting vessels will be able to safely navigate around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–098 to read as follows:

§ 100.35–T05–098, Willoughby Bay, Norfolk, Virginia.

(a) *Regulated area.* The regulated area is established for the waters of Willoughby Bay contained within the following coordinates:

Latitude	*Longitude*
36°58′36.0″ North	076°18′42.0″ West
36°58′00.0″ North	076°18′00.0″ West
36°57′49.0″ North	076°18′14.0″ West
36°57′36.0″ North	076°17′55.0″ West
36°57′26.0″ North	076°18′06.0″ West
36°58′15.0″ North	076°19′08.0″ West
36°58′36.0″ North	076°18′42.0″ West

All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Hampton Roads Sailboard Classic under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special Local Regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 5 p.m. on October 29 and 30, 2005.

Dated: October 11, 2005.

S. Ratti,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–21017 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–104]

RIN 1625–AA08

Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: On September 1, 2005, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** requesting public comments regarding establishment of permanent special local regulations for ''Tug-of-War'', a marine event conducted over the waters of Spa Creek between Eastport and Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Spa Creek during the event.

DATES: Effective October 20, 2005. For 2005 only, this rule is enforced from 9:30 a.m. to 12 p.m. on October 29, 2005. Thereafter, this rule will be enforced annually from 10:30 a.m. to 2:30 p.m. on the first Saturday in November.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–104 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia

23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD'' in the **Federal Register** (70 FR 52054). We received no letters commenting on the proposed rule. The Coast Guard did receive telephonic comments from the Annapolis Harbormaster. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying its effective date would be contrary to public interest, since immediate action is needed to protect event participations, spectator craft and other vessels transiting the event area. However advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

On October 29, 2005, the City of Annapolis will sponsor the ''Tug-of-War'', across the waters of Spa Creek between Eastport and Annapolis, Maryland. The event will consist of a tug of war between teams on the Eastport side of Spa Creek pulling against teams on the Annapolis side of Spa Creek. The opposing teams will pull a floating rope approximately 1700 feet in length, spanning Spa Creek. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control while the rope is spanned across Spa Creek, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

One comment was received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**.

The Coast Guard received comment from the Annapolis, MD Harbormaster that recommended a change in the times of the event scheduled for October 29, 2005 than previously announced in the notice of proposed rulemaking (NPRM) that was published on September 1, 2005. This final rule will change the time of the special local regulations. For 2005 only, this special local regulation will be enforced from 9:30 a.m. until 12 p.m. on October 29, 2005.

The Coast Guard has modified the time of the event to accommodate local waterway users. Accordingly, the Coast Guard is establishing permanent special local regulations on specified waters of Spa Creek. The regulated area will include a 400 foot buffer on either side of the rope that spans Spa Creek from shoreline to shoreline.

This rule will be enforced annually from 10:30 a.m. to 2:30 p.m. on the first Saturday in November and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel shall enter or remain in the regulated area. The Coast Guard Patrol Commander may stop the event to allow vessels to transit the regulated area.

For 2005 only, the enforcement period of the regulation will be changed from the first Saturday in November to the last Saturday in October.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this permanent rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a segment of Spa Creek during the event, the impact of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of Spa Creek during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 9:30 a.m. to 12 p.m. on October 29, 2005, and annually thereafter from 10:30 a.m. to 2:30 p.m. on the first Saturday in November. Although the regulated area will apply to the entire width of Spa Creek, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.534 to read as follows:

§ 100.534, Tug-of-War; Spa Creek, Annapolis, Maryland.

(a) *Regulated area.* A regulated area is established for the waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the ''Tug of War'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special Local Regulations:* (1) No person or vessel may enter or remain in the regulated area unless participating in the event or authorized by the Patrol Commander. The Patrol Commander may intermittently authorize general navigation to pass through the regulated area. Notice of these opportunities will be given via marine safety radio broadcast on VHF–FM marine band radio, channel 16 (156.8 MHz) and channel 22 (157.1 MHz).

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course.

(d) *Enforcement period.* This section will be enforced annually from 10:30 a.m. to 2:30 p.m. on the first Saturday in November. In 2005 the section will be enforced from 9:30 a.m. to 12 p.m. on October 29, instead of the first Saturday in November.

Dated: October 11, 2005.

S. Ratti,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–21018 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Direct Loan Program, Federal Family Education Loan Program)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice extending the expiration date for the waivers and modifications of statutory and regulatory provisions pursuant to the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, Public Law 108–76.

SUMMARY: We extend the expiration date for the waivers and modifications of statutory and regulatory provisions issued by the Secretary pursuant to the HEROES Act of 2003 and announced in a notice published in the **Federal Register** on December 12, 2003 (68 FR 69312).

EFFECTIVE DATE: September 30, 2005. The waivers and modifications announced in the December 12, 2003 **Federal Register** notice expire on September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Wendy Macias, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006–8544. Telephone: (202) 502–7526 or by e-mail: *wendy.macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the HEROES Act of 2003, on December 12, 2003, the Secretary announced in a notice published in the **Federal Register,** the waivers or modifications of statutory or regulatory provisions that were appropriate to assist individuals who are applicants and recipients of student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA), and who—

- Are serving on active duty during a war or other military operation or national emergency;
- Are performing qualifying National Guard duty during a war or other military operation or national emergency;
- Reside or are employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or
- Suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

Under the terms of the HEROES Act of 2003, these waivers and modifications were scheduled to expire on September 30, 2005. However, on September 30, 2005, the President signed into law Pub. L. 109–78, which extended the expiration date of the HEROES Act of 2003, from September 30, 2005 to September 30, 2007. As a result, we are extending the waivers and modifications announced in the December 12, 2003, **Federal Register** notice through September 30, 2007.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.htm1.*

Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program.

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, Pub. L. 108–76, Pub. L. 109–78.

Dated: October 14, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–21012 Filed 10–19–05; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 111

Address Visibility on Bundles of Flat-Size and Irregular Parcel Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is adopting new mailing standards to ensure that address and presort information on bundles of flat-size and irregular parcel mail remains visible and readable during processing. The new standards apply only to bundles of Periodicals, Standard Mail, and Package Services mail intended for processing on our Automated Package Processing System equipment.

EFFECTIVE DATE: October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, Mailing Standards, U.S. Postal Service, at (202) 268–7278 or Susan Hawes, Operational Requirements and Integration, U.S. Postal Service, at (202) 268–8980.

SUPPLEMENTARY INFORMATION:

Background

The Postal Service uses automated equipment whenever possible to reduce mail processing costs and help maintain stable postage rates. Our new Automated Package Processing System (APPS) for bundles of flat-size and irregular parcel mail has optical character reader (OCR) technology, enabling it to read delivery information and process mail more efficiently. APPS will replace many of our small parcel and bundle sorters.

We published a proposed rule in the **Federal Register** on September 2, 2004 (69 FR 53666), concerning address visibility on bundles of flat-size and irregular parcel mail. Our proposed rule included the following changes in mailing standards for bundles of Periodicals, Standard Mail, and Package Services mailpieces intended for processing on APPS equipment:

• Address and presort designation visibility,

• The use of optional bundle labels, and

• New bundle height restrictions.

Comments Received

We received comments on the proposed rule from two publishers, ten printers, six mailer associations, six letter shops, two mail owners, one strapping manufacturer, and one individual. Based on these comments, we are not implementing new standards for the use of optional bundle labels or bundle height restrictions. Instead, our revised standards require the complete address on the top piece of each bundle to be visible and readable by the naked eye through the shrinkwrap or clear strapping.

Comments on Bundle-Securing Materials

Several comments indicated a need to clarify our ''recommendations'' versus ''requirements.'' Our proposal recommended the use of polywrap or strapping with a level of haze showing less than 70 percent. The haze specification is meant as a helpful guideline for mailers and is a recommendation, not a requirement.

Two comments were concerned with the cost and availability of clear strapping materials. Clear, smooth strapping is currently available in the marketplace. Using these materials may be the most effective way to comply with the new standard. Because mailers may need time to use up their stock of current materials and modify their processes, the mandatory compliance date is April 30, 2006—approximately six months after we publish the revised standards in Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM).

Comments on APPS and Address Visibility

We received several comments suggesting a lack of data on the causes of APPS read failures. Our tests of APPS equipment revealed the three most significant causes of unreadable addresses: strapping obscuring addresses, shrinkwrap seams obscuring addresses, and poor bundle integrity. This data is the basis for our new standards requiring that address and presort information on bundles be ''visible and readable by the naked eye.''

Several comments sought clarification about what address and presort elements APPS must read. To sort a bundle, APPS must read the delivery address information, as well as the optional endorsement line (OEL) or the bundle label.

One comment expressed concern that the ''visible and readable by the naked eye'' standard is unsuitable for APPS readability. Generally, APPS can read addresses not obstructed by bundling materials. However, if APPS cannot read all the elements needed to sort a bundle, an employee at a remote encoding center should be able to read the address and presort marking if they meet the new standard, allowing us to sort the bundle within the APPS process.

Comments on Alternatives to the Visibility Standard

Two comments asked us to explore alternative solutions for address visibility. One association recommended the application of the ''4-state barcode'' as a substitute for a visible and readable address. Although there are many potential benefits of the 4-state barcode, a visible and readable address is necessary for efficient mail processing and delivery. One letter shop asked for alternatives to clear, smooth strapping. As an alternative, mailers may place the address in a quadrant of the mailpiece not obscured by strapping.

Comments About Verification and Acceptance

We received several comments about verification and acceptance of bundles processed on APPS. We will incorporate verification for address visibility into our current acceptance procedures. For the first six months after we publish the new standards, we will provide feedback at acceptance and by using eMIR (Electronic Mail Improvement Report). We will not assess additional postage for readability failures until April 30, 2006.

Comments About Increased Costs and Incentives for Compliance

We received many comments concerning the potential increased costs to mailers to meet the new standards. Several comments recommended that we establish an industry workgroup to develop alternative solutions. We held several meetings with industry representatives to carefully consider comments and develop alternative solutions. We designed our final rule to minimize cost burdens by excluding new standards for plastic strapping or shrinkwrap or for an optional bundle label.

We received five comments suggesting that we provide incentives to comply with the new standards. These comments are outside of the scope of this rule.

Other Comments

Two comments discussed a certification process. One printer opposed a shrinkwrap certification process, and one letter shop suggested using the APPS optical system to test for certification. We will not adopt a certification requirement. However, mailers may request testing of their clear, embossed strapping by contacting USPS Engineering (see DMM 608.8.0 for contact information). Tests have demonstrated that clear, smooth strapping does not obstruct readability.

One mailer association advocated the use of a modified label carrier, and another comment concerned the use of facing slips. One publisher said the new standards could affect preparation and addressing for cover wraps, attached mail, and similar items. It is not our intent to restrict creativity or marketing options for mail owners; we simply need to read the address and presort information on bundles to efficiently sort and deliver the mail.

One association recommended that we let mailers use their own methods to satisfy the APPS requirements. The same association recommended a thorough review of the technical standards for polywrap and banding. We are not imposing specific technical standards for polywrap and banding.

Comments About the Implementation Date

Five comments stated that mailers were not ready or could not comply with the proposed standards, and six other comments did not agree with the proposed effective date. We understand that mailers need time to comply with the new standards. For the first six months after publication of the new standards, we will notify mailers about related problems and work with them to improve readability of their address and presort information. During this time, we will not assess any additional postage on mailings that do not comply.

Recommendations Related to the Basic Requirement

We recommend that strapping used for bundling be clear, smooth, and have less than 70 percent haze in accordance with the American Society for Testing and Materials (ASTM) standard D1003. Clear, smooth strapping that is tightly secured around the bundle does not obstruct visibility. Strapping should not contain any seams or texture marks that obscure address characters. We recommend that any shrinkwrap used to secure bundles show less than 70

percent haze after shrinkage. Seams, blisters, wrinkles or other protrusions on shrinkwrap material should not obscure addresses on the top pieces of bundles. We also recommend that any bundle with multiple layers of bundling materials show less than 70 percent haze through all combined layers. We encourage mailers to use USPS Publication 177, Guidelines for Optimizing Readability of Flat-Size Mail.

Summary of the New Standard

Mailers preparing presort bundles must make the delivery address information and any presort label or optional endorsement line visible and readable by the naked eye. The new standard applies to mail processed on APPS equipment. The requirements do not apply to:

- Letter-size mailpieces,
- First-Class Mail flat-size pieces or parcels,
- Mail placed in or on 5-digit or 5-digit scheme sacks or pallets,
- Mail placed in carrier route or 5-digit carrier routes sacks,
- Carrier route mail entered at a destination delivery unit,
- Standard Mail flat-size pieces prepared in letter trays under DMM 345.3.4, and
- Customized MarketMail.

Effective Date

We are revising these standards on October 27, 2005. Recognizing that the mailing industry may have to change some procedures to ensure address visibility, we will allow a six-month grace period for compliance. We will not assess penalties on bundles not meeting the standards until April 30, 2006. Until April 30, 2006, acceptance employees will randomly examine bundles for address visibility. We will provide feedback to mailers at acceptance and via eMIR from destination sites. We also will work closely with mailers to improve address readability on their bundles.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as listed below:

300 Discount Mail Flats

* * * * *

340 Standard Mail

* * * * *

345 Mail Preparation

* * * * *

2.0 Bundles

* * * * *

[Renumber current 2.2 through 2.13 as new 2.3 through 2.14. Add new 2.2, ''Address Visibility,'' and revise new 2.11, as explained below. Make these same changes to 445.2.0 (for Standard Mail parcels), 365.2.0 and 465.2.0 (for Bound Printed Matter flats and parcels), 375.2.0 and 475.2.0 (for Media Mail flats and parcels), 385.2.0 and 485.2.0 (for Library Mail flats and parcels), 705.8.5 (for bundles on pallets), and 707.19 (for Periodicals). Exception: Do not repeat items a through e for Media Mail or Library Mail; do not repeat items a and e for Bound Printed Matter and Periodicals.]

2.2 Address Visibility

Mailers preparing presort bundles must ensure that the delivery address information on the top mailpiece in each bundle is visible and readable by the naked eye. Mailers using strapping that might cover the address can avoid obstructing visibility by using clear, smooth strapping tightly secured around the bundle. Mailers using barcoded pressure-sensitive bundle labels, optional endorsement lines, carrier route information lines, or carrier route facing slips also must ensure that the information in these presort designations is visible and readable by the naked eye. This standard does not apply to the following:

a. Customized MarketMail.

b. Bundles placed in or on 5-digit or 5-digit scheme (L001) sacks or pallets.

c. Bundles placed in carrier route and 5-digit carrier routes sacks.

d. Bundles of mailpieces at carrier route rates entered at a destination delivery unit (DDU).

e. Bundles of Standard Mail flat-size pieces prepared in letter trays under 345.3.4.

* * * * *

2.11 Labeling Bundles

[Replace the third sentence in 2.11 with the following two sentences to clarify that the bundle label must not obscure the delivery address.]

* * * Barcoded pressure-sensitive bundle labels must not obscure the delivery address block. Banding or shrinkwrap must not obscure any bundle label. * * *

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–20924 Filed 10–19–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL–7983–7]

Guidance on Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance

AGENCY: Environmental Protection Agency.

ACTION: Final guidance.

SUMMARY: Title VI of the Clean Water Act (CWA) Amendments of 1987 provides flexibility for States to use four percent of all capitalization grant awards for the reasonable costs of administering their Clean Water State Revolving Fund (CWSRF) programs. Because many States have CWSRF administrative costs which exceed the four percent limit, the U.S. Environmental Protection Agency (EPA) has allowed States to charge fees on CWSRF loans. This guidance addresses the use of fees that are charged on loans and included as principal in loans and the use of fees that are charged on loans but not included as principal in loans. These requirements will be included as terms and conditions in all future grant agreements (or operating agreements).

DATES: This guidance is effective October 20, 2005.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Kit Farber, State Revolving Fund Branch, Municipal Support Division, Office of Wastewater Management (MC–4204M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is (202) 564–0601 and the e-mail address is *farber.kit@epa.gov*.

Copies of this document can be obtained from EPA's Office of Wastewater Management Web site at *http://www.epa.gov/owm/cwfinance/cwsrf*.

SUPPLEMENTARY INFORMATION:

Background

The CWA authorizes States to charge interest on loans under the CWSRF program. At their discretion, States may provide loans at or below market

interest rates, including interest free loans. Payments of interest on loans together with principal repayments must be credited to the CWSRF.

In addition to collecting principal repayments and interest on loans, some States charge recipients other fees when providing CWSRF assistance. Fees are used for a variety of purposes but most often to supplement funds available for administration of the CWSRF. The manner in which fees are charged to assistance recipients determines the allowable uses for these funds.

Fees can be grouped into one of two categories. Fees either (1) are included as principal in loans or (2) are other charges that are not included in loan principal. This guidance is being issued to address the two categories of CWSRF loan fees since their use is governed by two distinct principles.

Fees included in loan principal are funds originating from the CWSRF, borrowed by the recipient and repaid to the State, most often for loan origination expenses. The use of fees included in CWSRF loan principal is subject to the limitations on eligible uses of CWSRF funds and amounts available for costs of administration found in Title VI of the CWA. The FY 2006 Appropriations Act eased these limitations for fees included in loans made in FY 2006 and in earlier years. Congress may continue extending this provision.

In contrast, other fees charged on loans are paid by the recipient from non-CWSRF funds. These fees are often based on the outstanding balance of the loan in much the same way that interest is charged. These fees may also be charged up-front but are not borrowed from the CWSRF. Examples of these fees are annual loan servicing fees, application fees, loan origination fees, and processing fees.

For this guidance, references to loans are meant to also include any other types of assistance provided by a State to recipients under the CWSRF program. References to the operating agreement are meant to also include the intended use plan where either document is incorporated by reference into the grant agreement.

This guidance was developed with substantial review and comment from EPA Regional staff, national stakeholder organizations, and a State/EPA SRF Work Group comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies. Many of the comments received were incorporated into the final guidance.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this guidance is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant guidance is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this guidance does not significantly or uniquely affect small governments. This guidance does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This guidance will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This guidance also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This guidance is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This guidance does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This guidance also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because this guidance includes binding legal requirements, it is considered a rule and subject to the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this guidance and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This guidance is not, however, a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: September 26, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance

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I. Fees Included as Principal in Loans

A. Applicability

This section applies where States include fees in a CWSRF loan and the total amount of the loan includes not only the cost of project construction but also the amount of the fee. Particularly, this guidance applies to fees included in loan principal that are charged to borrowers for CWSRF administrative costs. Even though the borrower pays the fee, the amount of the fee originated in the CWSRF and will be repaid to it. For example,

—The State charges the loan recipient an administrative fee based on a percentage of the principal amount of the loan similar to a loan origination fee;
—The recipient borrows funds from the CWSRF to cover the project costs and the fee;
—The loan proceeds are disbursed to the recipient;
—The recipient pays the State the fee; and
—The State deposits the collected amount into an account outside the CWSRF.

The amount borrowed to finance the fee is rolled into the total amount of the loan. Loan repayments consist of the principal amount borrowed for construction, the amount borrowed to finance the fee, and any interest charged on the loan.

Costs of issuing bonds that are initially paid from bond proceeds are not restricted under this guidance even if those costs are subsequently allocated to the borrower and included in loan principal.

B. Limitation on Using CWSRF To Cover Administrative Costs

Because fees included in loan principal originate in the CWSRF, use of these amounts is governed by the CWA. For fees included in loans issued in FY 2006 or prior years, Congress, through

the FY 2006 Appropriations Act, eased the CWA's four percent limit on administration costs. In the absence of additional legislative relief, fees included in loans issued after FY 2006, i.e., after September 30, 2006, are again subject to the CWA's provisions governing administration costs.

The CWA states that the CWSRF may be used ''for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed four percent of all grant awards to such fund under this title.'' [CWA section 603(d)(7)]. CWSRF regulations define allowable administrative costs to ''include all reasonable costs incurred for management of the CWSRF program and for management of projects receiving financial assistance from the CWSRF. Reasonable costs unique to the CWSRF, such as costs of servicing loans and issuing debt, CWSRF program start-up costs, financial management and legal consulting fees, and reimbursement costs for support services from other State agencies are also allowable.'' [40 CFR 35.3120(g)(2)].

The language of the CWA places a ceiling on the amount of all CWSRF moneys that may be used by the State at no more than four percent of the amount of all capitalization grant awards. Further, the CWSRF regulations state: ''Money in the CWSRF may be used for the reasonable costs of administering the CWSRF, provided that the amount does not exceed four percent of all grant awards received by the CWSRF.'' [40 CFR 35.3120(g)(1)].

The four percent limitation applies to all moneys originating or deposited in the CWSRF. Both the moneys paid by the State directly from the CWSRF for administration and the amounts loaned from the CWSRF to a recipient for repayment to the State for administrative costs are applied against the four percent ceiling. If CWSRF moneys are loaned and repaid to the State for administration costs, the amount disbursed is considered used for administration costs at the time it is disbursed from the fund. A fee charged that is not used for administrative costs (but utilized for other eligible uses of the fund) is not counted toward the four percent limit. Similarly, the four percent does not apply to fees paid by loan recipients that do not originate from CWSRF funds (not included in the loan) and are not deposited into the CWSRF.

C. FY 2006 Appropriations Act Provisions

In the FY 2006 Appropriations Act, Congress gave States temporary relief from the four percent limit on administration costs. The FY 2006 Act provides:

> * * * notwithstanding section 603(d)(7) of the Federal Water Pollution Control Act, as amended, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in the fiscal year 2006 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration.''

The relief provided by the Appropriations Act applies to fees included in CWSRF loans made in FY 2006 and prior years only. Such fees must be used for eligible purposes of the fund, including administration, and are not limited by the CWA's four percent ceiling on administration costs if they are accounted for separately from other CWSRF moneys and are deemed reasonable by EPA. Provided the fee amounts are accounted for separately, States may hold fees originating in CWSRF loans either inside or outside the CWSRF. Absent Congressional extension of this provision, however, after September 30, 2006, the four percent limitation again applies to costs of program administration. If, on the other hand, Congress substantively alters the provision pertaining to the four percent limitation, this guidance will be reviewed to determine if changes are needed to reflect such changes.

Of course, States may use fees collected for any of the uses specified as eligible under the CWA, not just administration. Pursuant to section 603(d) of the CWA, the only permissible uses of the CWSRF are loans, certain refinancings, guarantees of and purchasing insurance for certain local financings, as a source of revenue or security for repayment of CWSRF bonds, to guarantee loans of sub-state revolving funds, to earn interest, and for costs of administration. These activities must be undertaken for eligible purposes: ''for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320.'' [CWA section 601(a)].

To summarize:

Under the Appropriations Act provisions, States may use fees included in loans in excess of the CWA's four percent ceiling on CWSRF moneys used for fund administration if:

—The fees were included as principal in CWSRF loans made during FY 2006 or prior years; and
—EPA determines the fees were reasonable in amount; and
—The fees were accounted for separately from other fund assets.

D. Implementation Under the FY 2006 Appropriations Act

EPA Regional Offices should identify which States have included fees in loans and determine the reasonableness of the fees included in loans made in FY 2006 and prior years. If used for eligible purposes, fee amounts collected that were previously described in a State's Intended Use Plan or other document approved by EPA may be deemed reasonable.

For fees already collected, States must identify (1) the amount collected that was included in loan principal; (2) the amount expended; (3) the purposes for which the fees were used; and (4) the amount still remaining. The Regional Offices and Headquarters will work together with each State to ensure compliance with the FY 2006 Appropriations Act and to determine what actions are necessary where State actions are not in conformance with the Appropriations Act.

States must ensure that fee amounts unused and uncollected fees (and interest earnings thereon) included in loans made prior to the end of FY 2006 will also be used only for eligible CWSRF purposes and will be accounted for separately.

E. Implementation for Fees Collected on Loans Made After FY 2006

In the absence of future legislative provisions to the contrary, fees included in CWSRF loans made after September 30, 2006, are subject to the four percent ceiling on administration costs. Fees assessed in this manner will be deemed reasonable provided they do not cause the effective rate of the loan (which includes both interest and fees) to exceed the market rate. Fees and earnings thereon must be used for eligible CWSRF purposes whether held inside or outside the fund.

States that include fees in loan principal may need to modify their operating agreements and other program implementation documents pursuant to this guidance. Each grant agreement or operating agreement entered into after September 30, 2006, must contain provisions to identify the fees included in CWSRF loans and specify the uses of those fees consistent with this guidance. Each grant agreement or operating

agreement incorporated therein by reference must also provide that, for loans made after FY 2006, amounts paid from the CWSRF for fund administration will be limited to an amount equal to four percent of capitalization grant awards. This limit applies to administration amounts paid directly by the State and to amounts disbursed from the CWSRF to a loan recipient and repaid to the State for payment of administration costs. The grant agreement must also require the State to maintain records which account separately for fees collected and also account for CWSRF funds used for CWSRF administrative purposes. The next intended use plan prepared by the State after the effective date of this guidance must identify the type of fees charged on loans, the fee rate, and the amount of fees available for future use. Finally, the annual report must identify the fees included in CWSRF loans, the amount of fees collected, and their use.

II. Fees Charged on CWSRF Assistance But Not Included as Principal in Loans

A. Applicability

This section addresses the use of fees that are charged on CWSRF loans but not included as principal in loans; and discusses the application of the CWA and the program income provisions of EPA's regulations at 40 CFR part 31 to these fees. For this guidance, the term ''fees that are charged on CWSRF loans'' is meant also to include any other CWSRF loan charges and the income thereon. Costs of issuing bonds that are initially paid from bond proceeds are not restricted under this guidance even if those costs are subsequently allocated to the borrower and included in loan principal.

B. Purpose

There are several purposes for this guidance. First, this guidance clarifies how the program income regulation at 40 CFR 31.25 applies to the CWSRF program. Second, this guidance establishes the parameters for uses of certain program income where additional flexibility is allowed under § 31.25. Third, this guidance establishes the allowable uses of earnings from fees not covered by the program income provisions of § 31.25. This guidance is intended to protect the long-term health of the fund.

Many States charge fees on CWSRF loans issued. Most of these fees are used for supplementing CWSRF moneys available to pay administration costs. However, there has been a wide spectrum of use beside fund administration; some related to water-quality purposes and others not related even to environmental purposes.

Further, the States and EPA recognize that there is often a direct trade off between the interest rate charged on loans and the fee rate charged on loans. In general, there is a limit to the amount States can charge borrowers before they turn elsewhere for financing. When the fee rate goes up, the interest rate must go down in order to keep the loan affordable and competitive. While loan interest earnings add to the assets of the program, fees are often held outside the fund and used for ancillary purposes. Unlike loan interest earnings, therefore, fees do not add to the assets available to the program or support its growth. The practice of lowering the interest rate on a loan in order to charge a fee reduces the future funding capacity of the program when the fee is not used directly for program purposes.

C. Program Income

1. Definition of Program Income

Program income is defined at 40 CFR 31.25(b) as ''gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.'' Fees collected or loan charges in addition to principal and interest that are not deposited as loan repayments are ''income received by the grantee * * * directly generated by a grant supported activity''. The State is receiving income as a result of an activity that is established and operated with the support of a Federal capitalization grant.

According to part 31, income ''directly generated by a grant supported activity'' is considered program income. Under the CWSRF program, grant supported activities are those activities funded in an amount equal to the dollar amount of the Federal capitalization grant, *i.e.*, funds directly made available by the capitalization grant. Income earned from fees charged on CWSRF loans made from funds directly made available by the capitalization grant is program income and subject to the requirements of the general grant regulations.

The regulations make a distinction between program income earned during the grant period and program income earned after the grant period. ''During the grant period'' is defined as ''the time between the effective date of the award and the ending date of the award reflected in the final financial report'' [40 CFR 31.25(b)]. For the CWSRF program, the ''ending date of the award'' is the date reported in the final Financial Status Report (FSR) as the end of the period covered by that FSR. Once a State has submitted a final FSR for a particular capitalization grant, fees collected after the end of the period covered by that FSR from loans awarded with that capitalization grant are considered to be earned after the grant period.

Section 31.25 further illustrates what is, and what is not, program income. Program income is described as ''fees for services performed'' [40 CFR 31.25(a)], but it does not include ''(T)axes, special assessments, levies, fines, and other such (governmental) revenues * * * § '' [40 CFR 31.25(d)]. The ''government revenues'' exception was intended to exclude from the program income rules those revenues collected under the general taxing power of the government grant recipient. The fees collected in the CWSRF program are income for services performed, similar to fees charged by banks on private loans.

States and EPA will negotiate specific options for calculating the amount of program income earned. It is important that States are able to account for program income and the amount of fees collected that are not program income as outlined below. Following are three examples that might serve as models in determining the amount of program income earned. Each method could be further refined to account for income earned during the grant period and amounts earned after the grant period:

(1) Program income may be calculated on a project-by-project basis by identifying those projects funded with capitalization grants and determining the amount of fees collected from these projects.

(2) Program income may be calculated based on the amount of capitalization grants awarded by multiplying the amount of capitalization grants by the fee rate charged.

(3) Program income may be calculated by pro-rating the total fees collected between the Federal loan assistance and the non-Federal loan assistance provided. The calculation for program income would be to multiply total fees collected by the ratio of capitalization grants to total loan assistance provided. The remaining fees would not be considered program income.

2. Allowable Uses of Program Income

Pursuant to 40 CFR 31.25(g)(1) program income must be used to ''reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project'' unless used for one or both of the following alternatives as provided by the grant agreement:

(1) ''added to the funds committed to the grant agreement by the Federal agency and the grantee * * * [and] be used for the purposes and under the conditions of the grant agreement'' [40 CFR 31.25(g)(2)] or

(2) ''used to meet the cost sharing or matching requirement of the grant agreement'' [40 CFR 31.25(g)(3)].

Pursuant to section 603(d) of the CWA, the permissible uses of the CWSRF are loans, certain refinancings, guarantees of and purchasing insurance for certain local financings, as a source of revenue or security for repayment of CWSRF bonds, to guarantee loans of sub-state revolving funds, to earn interest, and for costs of administering the CWSRF. These activities must be undertaken for eligible purposes: ''for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320.'' [CWA section 601(a)]. Therefore, under the CWSRF, the alternative uses of program income are for these purposes and to provide the required State match. If program income earnings are held outside the CWSRF, their use for administration costs is not counted against the CWA's four percent ceiling on administration costs.

EPA has the express authority to limit the use of program income earned after the grant period [40 CFR 31.25(h)]:

''There are no Federal requirements governing the disposition of program income earned after the end of the award period (*i.e.*, until the ending date of the final financial report * * *), unless the terms of the agreement or the Federal agency regulations provide otherwise.''

EPA guidance will allow program income earned after the grant period to be used for a broad range of water quality-related purposes. This guidance requires the inclusion of a grant condition in all capitalization grants awarded or a provision in the operating agreement after the effective date of this guidance so that in addition to the purposes allowed for program income earned during the grant period, amounts collected after the grant period may be used for various water quality activities. Such activities include, but are not limited to: Water quality monitoring; developing total maximum daily loads (TMDLs); permits under the National Pollutant Discharge Elimination System (NPDES) program; unified watershed plans; water quality restoration plans; source water assessments; wastewater treatment operator training programs [CWA section 104(g)(1)]; grants and loans for planning, designing, and building water quality projects; and management of other State financial assistance programs for water quality-related purposes. States may also use program income earned after the grant period for the combined financial administration of the CWSRF and DWSRF Funds where the programs are administered by the same State agency.

D. Fees Other Than Program Income That Are Not Included as Principal in Loans

Fees collected, that are not included as principal in loans, from activities financed with CWSRF funds other than those directly made available by the capitalization grant are not program income. Under section 602(a) of the CWA, EPA may include conditions in grant agreements in addition to those required to be included by Title VI of the CWA. In keeping with the Agency's mission, EPA has determined that water quality activities should be the beneficiary of any funds generated by the CWSRF program. EPA will treat funds deriving from CWSRF fees that are not program income the same as moneys from program income earned after the grant period, both types of funds being eligible for use in water quality activities. States may also use these fees for the combined financial administration of the CWSRF and DWSRF Funds where the programs are administered by the same State agency.

Further, interest earnings on program income collected during or after the grant period and interest earnings on other fees that are not program income under this section must be used only for water quality activities or for the combined financial administration of the CWSRF and DWSRF Funds where the programs are administered by the same State agency.

E. Implementation of Guidance

Each grant agreement (or operating agreement, if the operating agreement is incorporated by reference into the grant agreement) must contain a provision that allows the use of program income earned during the grant period for the specific purposes identified in 40 CFR 31.25(g)(2) and (3). Failure to specify the permitted uses of program income in the grant agreement or operating agreement, will cause such earnings to be deducted from the grant amount pursuant to § 31.25(g)(1). The grant agreement or operating agreement should also state that if program income is deposited into an account outside the fund, it may be used to supplement fund administration costs above the CWA's four percent ceiling on administration costs.

All grant agreements or operating agreements subsequent to the effective date of this guidance must contain a provision that identifies the ways in which the State will use program income collected after the grant period or other fees collected that are not considered program income. The uses specified must be consistent with this guidance. Fees collected from any loans awarded after the grant agreement or operating agreement become effective must be used only for the specified purposes.

The grant agreement must also require the State to maintain records which account separately for fees collected and specify how those amounts were used. States must account separately for program income earned during the grant period, program income earned after the grant period, and amounts collected that are not program income under this section if the uses of these amounts is different. Conversely, if the State is using all fees collected only for the purposes prescribed for program income earned during the grant period, then it need not account separately for the different types of fees collected. Similarly, if the State is using program income earned after the grant period and non-program income only for purposes related to water quality, it need not account separately for these types of fees collected. For example, if the State is using all fees collected for the cost of administering the CWSRF, the State need only report the total amount of fees collected and used for this purpose. If the State is using program income earned during the grant period for CWSRF administration and is using all other fees for water quality purposes, the State need only report the amount of fees collected and used for each of these two purposes. If fees collected are deposited in the CWSRF then their use is limited to those purposes identified in Title VI of the CWA. Further, the use of such fees for administering the fund would be subject to the CWA's four percent ceiling on administration costs. Fees collected that the State intends to use as State match must be so designated before being deposited in the CWSRF.

The next intended use plan prepared by the State after the effective date of this guidance must identify all types of fees charged on loans, including the fee rate, and the amount of fees available. The State's annual report (submitted under section 606(d) of the CWA) must identify the types of fees charged on loans, the amount of fees collected, and how those amounts were used. Several examples of how to measure program

income are provided above under Definition of Program Income.

States must ensure that the future use of program income collected during the grant period but not yet used is in accordance with the Agency's regulations and this guidance. EPA will work with States individually to determine what actions are necessary to address situations where fee amounts were used inconsistently with the applicability of the program income regulations to the CWSRF program.

F. Records Retention

CWSRF programs also must comply with requirements of 40 CFR 31.42(c)(3) pertaining to the retention of records for program income earned after the grant period. According to the regulation, ''the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.'' The length of the retention period is ordinarily three years, as set forth in § 31.42(b).

[FR Doc. 05–21014 Filed 10–19–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–MA–0003; FRL–7986–6]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the Commonwealth of Massachusetts. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities e.g., CISWIs). The Commonwealth of Massachusetts submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on December 19, 2005, without further notice unless EPA receives significant adverse comment by November 21, 2005. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0003 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

C. E-mail: *brown.dan@epa.gov*

D. Fax: (617) 918–0048

E. Mail: ''RME ID Number R01–OAR–2005–MA–0003'', Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

F. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to schedule your review. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, Office of Ecosystem Protection (CAP), EPA–New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1659, fax number (617) 918–0659, e-mail *courcier.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA taking today?

EPA is approving the negative declaration of air emissions from CISWI units submitted by the Commonwealth of Massachusetts.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by November 21, 2005, this action will be effective December 19, 2005.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective December 19, 2005.

II. What is the origin of the requirements?

Under Section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR Part 60, Subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When did the requirements first become known?

On November 30, 1999, EPA proposed emission guidelines for CISWI units. This action enabled EPA to list CISWI units as designated facilities. By proposing these guidelines, EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants. These guidelines were published in final form on December 1, 2000 (65 FR 75338) and codified at 40 CFR part 60, subpart DDDD.

IV. When did Massachusetts submit its negative declaration?

On August 23, 2005, the Massachusetts Department of Environmental Protection (MADEP) submitted a letter certifying that there are no existing CISWI units subject to 40 CFR Part 60, Subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.5475.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d) submissions, EPA's role is to approve state plans, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan submission, to use VCS in place of a state plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: October 13, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

■ 2. Subpart W is amended by adding a new § 62.5475 and a new undesignated center heading to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.5475 Identification of Plan—negative declaration.

On August 23, 2005, the Massachusetts Department of Environmental Protection submitted a letter certifying that there are no existing commercial and industrial solid waste incineration units in the State subject to the emission guidelines under part 60, subpart DDDD of this chapter.

[FR Doc. 05–20985 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 2005–05; FTR Case 2005–303]

RIN 3090–AI13

Federal Travel Regulation; Transportation Expenses; Government-Furnished Automobiles (GFA)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) by revising the mileage reimbursement rate reflecting costs of operating a Government-furnished automobile (GFA), and revising the table on how to determine distance measurements for travel. It also clarifies that, if determined to be advantageous to the Government, the employee may be reimbursed for mileage between the residence and office to a common carrier terminal, or from the residence directly to a common carrier terminal when on official travel requiring an overnight stay. An explanation of these changes is addressed in the ''Supplementary Information'' below.

The FTR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/ftr.*

DATES: *Effective Date:* October 20, 2005.

Applicability Date: FTR Part 301–10, § 301–10.310, as amended by this rule, is applicable for all travel performed on and after February 4, 2005.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Umeki Gray Thorne, Office of Governmentwide Policy, Travel Management Policy, at (202) 208–7636. Please cite FTR Amendment 2005–05, FTR case 2005–303.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Travel Regulation (FTR) as follows:

- Revises the table in § 301–10.302.
- Revises the section heading in § 301–10.306 to clarify that an employee may be reimbursed for use of a privately owned vehicle for round-trip travel between the residence and office to a common carrier terminal, or from a residence directly to a common carrier terminal on travel requiring an overnight stay.
- Revises § 301–10.310, by increasing the current reimbursement rate of $0.270 per mile (when a GFA is available to an employee) to $0.285 per mile, and increasing the reimbursement rate of $0.105 per mile (when a GFA is assigned directly to an employee) to $0.125. In consultation with the GSA Fleet, these rates are based on updated data reflecting agency costs to operate a GFA.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: May 27, 2005.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118, Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

§ 301–10.302 [Amended]

■ 2. Amend § 301–10.302—

a. In the table, in the second column, in the first entry under the heading ''The distance between your origin and destination is'', by revising the first entry to read ''As shown in paper or electronic standard highway mileage guides, or the actual miles driven as determined from odometer readings.''; and

b. In the table, in the second column, in the second entry under the heading ''The distance between your origin and destination is'', by revising the first sentence to read ''As determined from

charts issued by the Federal Aviation Administration (FAA).''

■ 3. Amend § 301–10.306 by revising the section heading to read as follows:

§ 301–10.306 What will I be reimbursed if authorized to use a POV instead of a taxi between my residence and office to a common carrier terminal, or from my residence directly to a common carrier terminal on travel requiring an overnight stay?

§ 301–10.310 [Amended]

■ 4. Amend § 301–10.310 in paragraph (a) by removing ''vehicle'' and ''27.0 cents'' and adding ''automobile'' and ''28.5 cents'' in its place, respectively; and by removing from paragraph (b) ''10.5 cents'' and adding ''12.5 cents'' in its place.

[FR Doc. 05–20216 Filed 10–19–05; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 73

Possession, Use, and Transfer of Select Agents and Toxins—Reconstructed Replication Competent Forms of the 1918 Pandemic Influenza Virus Containing Any Portion of the Coding Regions of All Eight Gene Segments

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Interim final rule.

SUMMARY: We are adding reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments to the list of HHS select agents and toxins. We are taking this action for several reasons. First the pandemic influenza virus of 1918–19 killed up to 50 million people worldwide, including an estimated 675,000 deaths in the United States. Also, the complete coding sequence for the 1918 pandemic influenza A H1N1 virus was recently identified, which will make it possible for those with knowledge of reverse genetics to reconstruct this virus. In addition, the first published study on a reconstructed 1918 pandemic influenza virus demonstrated the high virulence of this virus in cell culture, embryonated eggs, and in mice relative to other human influenza viruses. Therefore, we have determined that the reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments have the potential to pose a severe threat to public health and safety.

DATES: The interim final rule is effective on October 20, 2005. Written comments must be submitted on or before December 19, 2005.

ADDRESSES: Comments on the change to the list of HHS select agents and toxins should be marked ''Comments on the reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments'' and mailed to: Centers for Disease Control and Prevention, Division of Select Agents and Toxins, 1600 Clifton Rd., MS E–79, Atlanta, GA 30333. Comments may be e-mailed to: *SAPcomments@cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Mark Hemphill, Chief of Policy, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Rd., MS E–79, Atlanta, GA 30333. Telephone: (404) 498–2255.

SUPPLEMENTARY INFORMATION: The complete coding sequence for the 1918 pandemic influenza A H1N1 virus has been recently identified (Taubenberger *et al.,* 2005, Nature, vol. 437, pp. 889–893). Scientists from the Centers for Disease Control and Prevention together with collaborators at Mount Sinai School of Medicine, NY, Armed Forces Institute of Pathology, MD, and Southeast Poultry Research Laboratory, U.S. Department of Agriculture, GA, reconstructed the 1918 pandemic influenza virus by using reverse genetics to study the properties associated with its extraordinary virulence (Tumpey *et al.*, Characterization of the Reconstructed 1918 Spanish Influenza Pandemic Virus, Science 2005 310: 77–80). With the publication of the complete coding sequence, it will be possible for other scientists with knowledge of reverse genetics technology to reconstruct the 1918 pandemic influenza virus at other institutions.

The pandemic influenza virus of 1918–19 killed up to 50 million people worldwide, including an estimated 675,000 deaths in the United States. The 1918 pandemic influenza virus' (H1N1) most striking feature was the unusually high death rate among healthy adults aged 15 to 34 years. The question of whether the reconstructed 1918 pandemic influenza virus should be regulated as a select agent was considered by the Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The criteria used by the ISATTAC for reviewing the reconstructed 1918 pandemic influenza virus for inclusion on the select agent list were: degree of pathogenicity, communicability, ease of dissemination, route of exposure, environmental stability, ease of production, ability to genetically manipulate or alter, long-term health effects, acute morbidity, acute mortality, available treatment, status of immunity, vulnerability of special populations, and the burden or impact on the health care system. Based on these criteria, the ISATTAC determined that the reconstructed 1918 pandemic influenza virus could pose an immediate severe threat to public health and safety if it is not safely and securely maintained. Further, the ISATTAC noted that the biological and molecular properties that enabled the 1918 pandemic influenza virus to cause such widespread illness and death are not completely understood and that it is not known how virulent the reconstructed virus would be in the population today. In making its determination, the ISATTAC considered both the historical data regarding the original 1918 pandemic influenza virus and data from current in vitro and in vivo animal studies. The apparent virulence of this virus, together with the fact that the level of immunity in the general population and the ability of the virus to readily transmit among persons are unknown at this time, makes it prudent to immediately regulate this virus as a select agent. Although studies with this virus can lead to significant public health benefits for understanding pandemic influenza, improved diagnostics, and the development of more effective countermeasures, there are also potential risks of the misuse of this agent for purposes of bioterrorism as well as accidental release. Thus, if misused, the 1918 pandemic influenza virus may pose a biological threat to public health and/or national security.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) requires the regulation of each biological agent that has the potential to pose a severe threat to public health and safety. Congress recognized that a delay in the regulation of such biological agents was contrary to the public interest by requiring in the Bioterrorism Act that the initial Select Agent regulations be promulgated as an interim final rule. Therefore, the Secretary has determined that prior notice and opportunity for public

comment are contrary to the public interest and there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments that will be made to the rule as a result of the comments. In addition to seeking comments on the addition of this agent to the HHS list of select agents and toxins, we are also seeking comments on the regulation of reconstructed viruses that contain less than all eight gene segments from the 1918 pandemic influenza virus and if there are certain experiments with such constructs or with the fully reconstructed 1918 pandemic influenza virus that should be added to the ''Restricted experiments'' provisions of the regulation.

An entity must apply to the CDC Division of Select Agents and Toxins to possess, use, or transfer reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments. The CDC Division of Select Agents and Toxins will review the entity's biosafety plan to ensure that it provides a comprehensive risk assessment of the proposed research and adequately ensures appropriate biosafety measures. The CDC Division of Select Agents and Toxins will conduct a biosafety review of proposed experiments with the reconstructed 1918 pandemic influenza virus on a case-by-case basis. The ''Interim CDC–NIH Recommendation for Raising the Biosafety Level for Laboratory Work Involving Noncontemporary Human Influenza Viruses'' excerpted from the draft CDC/NIH Biosafety in Microbiological and Biomedical Laboratories, 5th edition will be used as the minimum containment for such experiments. However, in some cases supplemental biosafety measures may be deemed appropriate after review of the proposed experiments.

The case-by-case review by CDC's Division of Select Agents and Toxins will continue until further data are available that may result in changes to biosafety guidelines for work with the reconstructed 1918 pandemic influenza virus. Until such revised guidelines are available, entities should refer to the ''Interim CDC–NIH Recommendation for Raising the Biosafety Level for Laboratory Work Involving Noncontemporary Human Influenza Viruses.'' In accordance with these interim guidelines, work with such viruses should proceed with extreme caution and the viruses should be handled, at a minimum, under high-containment (Biosafety Level 3-enhanced) laboratory conditions. Enhancements should include the use of powered air purifying respirators, change-of-clothing and shower-out requirements, use of HEPA filtration for treatment of exhaust air, and a stringent medical surveillance and response plan. In addition to these currently published interim guidelines, annual vaccination with the currently licensed influenza vaccine is strongly recommended and antiviral prophylaxis should be available for individuals working with reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments.

The addition of the 1918 pandemic influenza virus to the HHS select agents and toxins list is effective immediately. Entities that intend to possess, use, or transfer this agent will be required to either register in accordance with 42 CFR part 73, or amend their current registration in accordance with § 73.7(h).

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0920–0576.

Please send written comments on the new information collection contained in this interim final rule to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333. Copies of this information collection may be obtained from Seleda Perryman, CDC Assistant Reports Clearance Officer, at (404) 639–4794 or via e-mail to *omb@cdc.gov*.

We expect that the entities who will register for possession, use, or transfer of reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments will already be registered with the Select Agent Program. This interim final rule will require such an entity to amend its registration with the Select Agent Program using relevant portions of APHIS/CDC Form 1 (Application for Laboratory Registration for Possessing, Use, and Transfer of Select Agents and Toxins). Estimated time to amend this form is 45 minutes for one select agent. Additionally, any registered entity that wishes to transfer reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments will be required to submit information using APHIS/CDC Form 2 (Report of Transfer of Select Agent and Toxins). Estimated average time to complete this form is 1 hour, 30 minutes. We estimate that only one to five registered entities may add or transfer reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments to their registration. Therefore, we calculate that there is no increase in the number of respondents, the total number of responses may increase by 9, and the total burden hours may increase to 9 hours and 45 minutes.

Executive Order 12866 and Regulatory Flexibility Act

This interim final rule has been determined to be significant for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Unfunded Mandates

The Unfunded Mandates Reform Act at 2 U.S.C. 1532 requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This interim final rule is not expected to result in any one-year expenditure that would exceed $100 million.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Would preempt all State and local laws and regulations that are inconsistent with this rule; (2) would have no retroactive effect; and (3) would not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects in 42 CFR Part 73

Biologics, Incorporation by reference, Packaging and containers, Penalties, Reporting and Recordkeeping requirements, Transportation.

Dated: October 7, 2005.

Michael O. Leavitt,

Secretary.

■ For the reasons stated in the preamble, we are amending 42 CFR part 73 as follows:

PART 73—SELECT AGENTS AND TOXINS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law No. 107–188, 116 Stat. 637 (42 U.S.C. 262a).

■ 2. Amend paragraph (b) of § 73.3 by adding the following entry in alphabetical order to read as follows:

§ 73.3 HHS select agents and toxins.

* * * * *

(b) * * *

Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments.

* * * * *

[FR Doc. 05–20946 Filed 10–17–05; 12:02 pm]

BILLING CODE 4160–17–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 27 and 90

[WT Docket No. 03–264; FCC 05–144]

Amendment of Various Rules Affecting Wireless Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (''Commission'') streamlines and harmonizes licensing provisions in the wireless radio services (WRS) that were identified in part during the Commission's 2000 and 2002 biennial regulatory reviews. The Commission concludes that streamlining and harmonizing these rules will clarify spectrum rights and obligations for affected licensees and support recent efforts to maximize the public benefits derived from the use of the radio spectrum. Among other matters, the Commission retains the references to ERP and EIRP in its rules, eliminates the transmitter-specific posting requirement of part 22 licensees, conforms the Emission Mask G to a modulation-independent mask that places no limitation on the spectral power density profile within the maximum authorized bandwidth, eliminates a rule which required the filing of certain outdated supplemental information, and eliminates certain transmitter output power limits rules. Further, in this document, the Commission eliminates many filing and data reporting requirements, some output power limits, and seeks comment on whether the Commission should increase other power limits.

DATES: Effective December 19, 2005.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr. and/or B.C. ''Jay'' Jackson, Jr. of the Mobility Division, Wireless Telecommunications Bureau, at 202–418–0620 or via e-mail at *Wilbert.Nixon@fcc.gov* and/or *Jay.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order portion (*Report and Order*) of the Commission's *Report and Order and Further Notice of Proposed Rulemaking,* FCC 05–144, in WT Docket Nos. 03–264, adopted July 22, 2005, and released August 9, 2005. The Further Notice of Proposed Rulemaking portion (*FNPRM*) of the document is summarized elsewhere in this publication. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at *fcc@bcpiweb.com.* The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 19, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis of the Report and Order

I. Introduction

1. On January 7, 2004, the Commission released a *Notice of Proposed Rulemaking*, (*NPRM*) published at 69 FR 8132, February 23, 2004, which commenced a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS) that were identified in part during the Commission's 2000 and 2002 biennial regulatory reviews pursuant to section 11 of the Communications Act of 1934, as amended (''Communications Act'' or ''Act'') (47 U.S.C. 161). The Commission proposed various amendments to parts 1, 22, 24, 27, and 90 of the rules to modify or eliminate provisions that treat licensees differently and/or have become outdated as a result of technological change, supervening changes to related Commission rules, and/or increased competition within WRS. We believe streamlining and harmonizing these rules will clarify spectrum rights and obligations and optimize flexibility for WRS licensees, fulfill our mandate under Section 11 of the Communications Act, and support efforts to maximize the public benefits derived from the use of the radio spectrum. Accordingly, in this *Report and Order*, we:

• Modify our rules to classify a deletion of a frequency and/or transmitter site from a multi-site authorization under part 90 as a minor modification.

• Retain the references to ERP and EIRP in our rules.
• Eliminate the transmitter-specific posting requirement of Part 22 licensees.
• Eliminate part 24 transmitter output power limits.
• Retain the frequency coordination requirement for incumbent licensees operating on 800 MHz General Category frequencies and for site-based 800 MHz General Category applications filed after 800 MHz rebanding.
• Conform the Emission Mask G to a modulation-independent mask that places no limitation on the spectral power density profile within the maximum authorized bandwidth.
• Eliminate § 90.607(a) of our rules requiring the filing of certain outdated supplemental information.
• Eliminate the loading requirement and references to the ''waiting list'' in § 90.631(d) of our rules, and eliminate § 90.631(i) which is no longer necessary because the 900 MHz specialized mobile radio (SMR) renewal period it references has long passed.
• Modify § 90.635 of our rules to remove the distinction between urban and suburban sites when setting the maximum power and antenna heights limits for conventional 800 MHz and 900 MHz systems. Eliminate the power limitations on systems with operational radii of less than 32 kilometers.
• Eliminate § 90.653 of our rules which specifies no limitation on the number of system authorizations to operate within a given geographic area as redundant.
• Eliminate § 90.658 of our rules which provides that site-based licensees of trunked SMR systems must provide loading data in order to either acquire additional channels or renew their authorizations.
• Modify § 90.693 of our rules to eliminate the necessity of incumbent 800 MHz SMR licensees filing notifications of minor modifications in certain circumstances.
• Eliminate § 90.737 of our rules which requires the filing of supplemental progress reports for 220 MHz Phase I licensees.

II. Background

2. In the *2000 Biennial Review Report* (16 FCC Rcd 1207 (2001)) and *2002 Biennial Review Report* (18 FCC Rcd 4726 (2003)), the Commission supported proposals to streamline, harmonize, and update a number of regulations after reviewing various WRS rule parts pursuant to section 11 of the Act. Section 11 of the Act requires the Commission to review biennially its regulations that are applicable to providers of telecommunications service in order to determine whether any rule is ''no longer necessary in the public interest as the result of meaningful economic competition.'' Following such reviews, the Commission is required to modify or repeal any such regulations that are no longer in the public interest. Since the release of the biennial review reports, the Commission has considered modifying or repealing certain regulations by issuing notices of proposed rulemakings as appropriate. The *NPRM* addressed additional proposals, identified in the 2000 and/or 2002 biennial review reports, to streamline and harmonize WRS rules that may no longer be necessary in the public interest pursuant to section 11 of the Act.

3. To a great extent, technological changes and/or successive changes to various Commission licensing rules have made it appropriate to review whether many of these rules are obsolete and no longer in the public interest. Accordingly, the *NPRM* sought comment on streamlining and harmonizing these rules if they no longer serve the public interest in their current form notwithstanding any findings regarding the level of competition among existing services. In its *2002 Biennial Review Report*, the Commission clarified the scope and standard of review for future proceedings conducted pursuant to section 11. In so doing, the Commission acknowledged that it has broad discretion to review the continued need for any rule even in the absence of a congressional mandate such as section 11. Accordingly, the *NPRM* sought comment pursuant to the Commission's broad authority to consider any proposed modifications to, or elimination of, these existing rules under the Commission's general public interest standard. The Commission also provided notice of, and invited the public to review, various administrative corrections that it intended to make at the conclusion of this proceeding to update and/or clarify certain WRS rules. Although it was not necessary pursuant to the Administrative Procedure Act to seek comment on all of the proposed rule changes in the *NPRM*, the Commission did so to facilitate administrative efficiency. Thirteen parties filed comments. Six parties filed reply comments.

III. Discussion

A. Classification of Part 90 Frequency and/or Transmitter Site Deletions as Minor Modifications Under Part 1

4. *Background.* Section 1.929(c)(4) of the Commission's rules requires that certain requests for modification to a site-specific part 90 authorization, including changes to the frequencies or locations of base stations, are considered major modifications to the license which require prior Commission approval. Pursuant to § 90.135(b) of the rules, a site-specific Part 90 licensee that makes a modification request listed in § 1.929(c)(4) must submit its request to the applicable frequency coordinator, unless the request falls within one of the specific exemptions listed in § 90.175 of the rules.

5. The Commission tentatively concluded that a request to delete a frequency or a site from a multi-site authorization under part 90 should be considered a minor modification that requires neither frequency coordination nor the Commission's prior approval and consequently proposed to amend its rules such that these actions would be treated as minor modifications under part 1 of the Commission's rules. The Commission invited comment on its tentative conclusion and also sought comment on whether there remains any need for licensees to notify the applicable frequency coordinator of any given deletion, if the rules are modified as proposed.

6. *Discussion.* We adopt our tentative conclusion which was unanimously supported by the commenting parties. We conclude that requiring frequency coordination for a part 90 frequency or site deletion request is unnecessary given that the Universal Licensing System (ULS) now provides frequency coordinators with immediate access to frequency and site information. We agree with AAA's assessment that it would be inconsistent to require coordination for a deletion of a site or a frequency when it is not required for a request to cancel an entire authorization. We also conclude that no further direct notification of frequency coordinators by licensees is necessary. We agree with NAM/MRFAC that licensees need provide no special notification to coordinators of a frequency/site deletion because licensees are generally required to file notifications of minor modifications with the Commission within 30 days of the change pursuant to §§ 1.929 and 1.947, and that coordinators routinely obtain such information via regular downloads from the ULS. We also clarify that a deleted frequency and/or transmitter location becomes available for the filing of applications, where applicable, when the ULS database is updated to reflect the grant of the modification application seeking deletion of a frequency and/or transmitter location.

B. Effective Radiated Power/Equivalent Isotropically Radiated Power

7. *Background.* In its comments in the 2000 biennial review proceeding, the Wireless Communications Division of the Telecommunications Industry Association (TIA) argued that designating FCC power limits in terms of ERP in the Cellular Radiotelephone Service (cellular) rules and EIRP in the broadband Personal Communications Service (PCS) rules is ''confusing to [its members'] customers since it appears that a dual mode phone [transmits] at different power levels at different frequencies.'' Although it recommended in the *2000 Biennial Review Report* that a rulemaking proposal be initiated to consider using EIRP exclusively in Commission rules, the Commission tentatively concluded that the costs of implementation and potential for greater confusion that would likely be associated with making a wholesale conversion from ERP limits to EIRP limits outweigh the potential benefits to those licensees who do not possess the scientific or engineering expertise to distinguish between the two standards and sought comment on this tentative conclusion.

8. *Discussion.* We decide to leave unchanged the references to ERP and EIRP in our rules and adopt our tentative conclusion. We agree with AAA and Nextel that the costs associated with implementing the TIA request, together with the potential for greater uncertainty, outweigh its possible benefits. Because an EIRP limit is always a larger number than the equivalent ERP limit, we believe that restating all ERP limits as EIRP limits could likely cause some entities (*e.g.*, licensees, frequency coordinators, *etc.*) to mistakenly think that the Commission has increased the permitted power.

C. Part 22 Transmitter Identification

9. *Background.* Section 22.303 of the Commission's rules provides, *inter alia*, that ''[t]he station call sign must be clearly and legibly marked on or near every transmitting facility, other than mobile transmitters, of the station.'' In the 2002 biennial review proceeding, CTIA and the Rural Cellular Association (RCA) recommended that the Commission eliminate this requirement in the interest of commercial wireless regulatory parity, since wireless services regulated under other parts of the Commission's rules are not subject to a comparable obligation to post call sign information on each transmitter. The Commission agreed with CTIA and RCA that these rules should be harmonized and tentatively concluded to delete the last sentence of § 22.303, thereby eliminating the transmitter-specific posting requirement for cellular and other part 22 licensees. The Commission requested comment on this proposal, including whether the absence of call sign information on transmitting facilities associated with other WRS that are not subject to part 22 has proved problematic to the public or other carriers in any way.

10. *Discussion.* We eliminate the transmitter-specific posting requirement of part 22 licensees and thereby adopt our tentative proposal. All commenting parties, including AMTA, CTIA and Cingular, support the proposal. AMTA asserts that the requirement for posting a call sign at each transmitter location is a vestige of a time when systems typically were licensed on a site-specific and frequency-specific basis wherein each location had a unique call sign and claims that now, a significant number of wireless systems, including part 22 systems, are licensed on a geographic basis with a single call sign covering the entire authorization. Cingular states that ''[n]ot having posted call sign information has not proved problematic for PCS and other services governed by other parts of the rules. The proposed rule change would harmonize the cellular and PCS rules and eliminate an unnecessary obligation on licensees.'' We agree with the commenters' analysis.

D. Part 24 Power and Antenna Height Limits

11. *Background.* Section 24.232 of the Commission's rules contains, *inter alia,* limits on broadband PCS base station equivalent isotropically radiated power and broadband PCS base station transmitter output power. For the last ten years, the rule limited ''base station power'' to 1640 watts peak EIRP for antenna heights up to 300 meters height above average terrain (HAAT), and also limited transmitter output power to 100 watts. When the Commission increased the PCS EIRP limit from 100 watts to 1640 watts in 1994, it concurrently adopted the 100 watt peak transmitter power output limit to ensure that broadband PCS licensees utilizing the increased EIRP would do so by employing high-gain, directional antennas, rather than high power transmitters with low-gain, non-directional antennas. Such use of directional antennas, the Commission stated, would help reduce the likelihood of a system imbalance in which PCS licensees would deploy base stations that could transmit a strong signal over distances well beyond a mobile unit's capability to respond. Also, the Commission stated that it would not authorize a higher output power limit at that time because ''interference could result to fixed microwave operations and/or to other PCS systems in adjacent service areas.'' As discussed in more detail below, the Commission recently adopted the *Rural Report and Order,* published at 69 FR 75144, December 15, 2004, and amended § 24.232(b), the power rule for broadband PCS, to allow twice as much radiated power (3280 watts EIRP) for use in rural areas, and also increased the base station transmitter output power limit from 100 watts to 200 watts in rural areas. The Commission indicated that increasing power limits in rural areas can benefit consumers in rural areas by reducing the costs of infrastructure and otherwise making the provision of spectrum-based services to rural areas more economic.

12. Powerwave, a manufacturer of Multi-Carrier Power Amplifiers (MCPAs), filed comments in the 2002 biennial review proceeding, prior to the Commission's release of the *Rural Report and Order,* and asserted that the output power limitations contained in rule § 24.232 are overly restrictive. According to Powerwave, as subscriber growth in PCS has increased dramatically since broadband PCS systems were first authorized, the number of carriers (*i.e.*, the individual electrical signals that carry information) used to provide the additional voice channels in a typical cell site has also increased. Powerwave asserted that the need for higher power levels has also increased because, due to increased local resistance to base station construction, more PCS stations must be collocated with cellular stations and, therefore, are spaced on a cellular design. As a result, PCS licensees, according to Powerwave, are increasingly using MCPAs in their systems. Powerwave contended that the output power limit in § 24.232(a) has the unintended effect of penalizing the use of an MCPA transmitter in the place of multiple individual transmitters because the output power rule limits power on a per transmitter basis rather than on a per carrier basis. As a result, Powerwave proposed that the Commission eliminate the output power restriction entirely, or at the very least, amend § 24.232 to provide that the output power of each carrier must not exceed 100 watts, instead of each transmitter.

13. In the *2002 Biennial Review Staff Report,* Commission staff generally agreed with Powerwave and concluded that § 24.232(a) should be modified in order to regulate PCS base station

transmissions in a more technologically-neutral manner. Given the case Powerwave presented and subsequent recommendations of staff, the Commission sought comment on whether to relax the output power limitations in § 24.232(a) by either amending the rule to provide that the output power limit of 100 watts applies on a ''per carrier'' basis in the case of MCPAs, or to simply eliminate the transmitter output power restriction to allow increased flexibility for PCS licensees in the configuration of their systems.

14. In addition, the Commission asked commenters to address whether or not a radiated power rule can be devised that is technology-neutral, given that the current ''per transmitter'' rule allows licensees utilizing relatively narrower bandwidth technologies (*e.g.*, GSM) to operate with higher aggregate power across their authorized spectrum than licensees utilizing relative broader bandwidth technologies such as CDMA. The Commission suggested that parties consider other alternatives, including whether or not a power spectral density limit (*i.e.*, power per unit bandwidth) would be more appropriate and thus preferable to a ''per-carrier'' wording. In response to this latter question, Motorola and Qualcomm argue that the Commission's current rule favors narrowband technologies over wider bandwidth technologies because it is on a ''per transmitter'' basis, and licensees using narrow bandwidth technologies could operate multiple transmitters resulting in a higher aggregate power per unit bandwidth. According to Motorola and Qualcomm, this places wider bandwidth systems at a competitive disadvantage because they need to deploy additional infrastructure to maintain the same coverage area as narrower bandwidth technologies.

15. Consequently, as a compromise between the narrowband and wideband technologies, Motorola urges the Commission to modify § 24.232(a) to apply the EIRP limits on a ''per MHz'' basis for technologies with emission bandwidths exceeding 1 MHz, and on a ''per carrier'' basis for technologies with emission bandwidths less than 1 MHz. Motorola argues that this adjustment would ensure that wideband systems could be deployed on a competitive basis by being able to radiate similar power per unit bandwidth, regardless of the technology utilized. Motorola contends that this proposal, as opposed to applying a universal power spectral density limit (as Qualcomm suggests) is more fair to narrowband operations, because applying a power spectral density universally would in effect impose limits in excess of those currently applicable and could negatively impact current systems and technologies.

16. Finally, CTIA, in *ex parte* submissions, proposes that EIRP limits for PCS licensees be limited to the larger of either: (1) The current rules; or (2) a power spectral density constraint of 3280 watts/MHz average EIRP for non-rural areas and 6560 watts average EIRP/MHz for rural areas. In addition, CTIA proposes that the Commission allow operators to measure power limits on an ''average'' as well as ''peak'' basis, as CTIA claims the term ''peak'' is subject to interpretation and may lead to confusion. CTIA argues that replacing the term ''peak'' with the term ''average'' or by simply removing ''peak'' (and thereby conform the form of the EIRP/ERP limits in parts 22 and 24) to permit measurements on either a peak or average basis, without restriction, would remove the uncertainty associated with use of the term peak in the current rules.

17. *Discussion.* After consideration of the record and the general experience with the PCS and other new wireless services, we conclude that the current base station transmitter output power limits should be relaxed to afford more flexibility and achieve harmonization among wireless radio services and competing technologies. The record demonstrates that the transmitter output power limit has had an undesirable effect in hindering the use of MCPAs. MCPAs may be a cost effective way to construct base stations, and we wish to allow licensees flexibility in their use. In view of these conclusions and our policy to eliminate unnecessary, counterproductive or ineffective rules, we are amending §§ 24.232(a)–(b) to eliminate the 100-watt and 200-watt base station transmitter output power limits for urban and rural systems, respectively (We note that Motorola requested that any changes made to § 24.232 of our rules be uniformly applied to our part 27 rules involving power for AWS systems, specifically § 27.50(d)(1). Motorola Comments at 2–5. While we are amending §§ 24.232(a) and (b) to eliminate the output power restriction for part 24 broadband PCS systems, the *NPRM* did not specifically address the proposed elimination of the output power restriction for AWS systems under part 27. Accordingly, we believe that this issue would be better addressed in our review of petitions for reconsideration of the *AWS Report and Order,* published at 69 FR 5711, February 6, 2004, where the identical form of relief was sought for AWS systems. *See* In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02–353, *Report and Order.* As discussed, we believe that the remaining rule that limits maximum EIRP is sufficient to serve our legitimate regulatory purposes for the time being. We note that, in view of our elimination of the broadband PCS base station transmitter output power limit rule, there is no need to address the ''per transmitter'' vs. ''per carrier'' aspect with regard to base station transmitter output power.

18. We conclude that the current base station transmitter output power limits have little or no role either in limiting interference or in ensuring that wireless systems are not designed with an excessive imbalance between the forward and reverse links. In light of our action eliminating the output power limit, we need not address Qualcomm's contention that establishing a per carrier limit would invariably cause harmful interference as GSM and TDMA networks could operate base stations at much greater power than CDMA and W–CDMA networks. We believe that interference problems in PCS are largely avoided by voluntary coordination between the licensees of adjacent systems of facilities located in the area near the geographic boundary between those systems, and by licensee compliance with existing EIRP limits. We further believe that the demand for wireless spectrum and resulting cost of obtaining access to that spectrum provide a strong incentive for licensees to reuse frequencies efficiently within PCS systems. The necessity for efficient re-use ensures that licensees carefully design systems such that the base station transmit range does not exceed the ability of mobile units to communicate back. Excess base transmit range would have a negative impact on frequency re-use and intra-system interference levels. Thus, we believe systems will continue to be properly designed, even without our current output power rule. We also believe that licensees are in the best position to decide what combination of equipment will result in the most efficient provision of service. For example, licensees may wish to utilize higher base station output power with lower gain antennas while operating within our EIRP limits, and we believe it is in the public interest to afford licensees the flexibility to make these types of decisions regarding system design.

19. With respect to the question of spectral power density limits, we decide to maintain for the time being the radiated power limits as recently increased in the *Rural Report and*

Order. Given these recent radiated power increases, we conclude that the record developed in response to the *NPRM* does not adequately support further EIRP increases. We find that the Commission and industry should be afforded additional time to gain experience with, and assess the effect of, the increased rural radiated power limits and the elimination of part 24 transmitter output power limits. We also note that the *NPRM* was issued in response to comments received in our biennial review process and, with respect to possible EIRP increases, was limited in scope to broadband PCS systems regulated under part 24 of our rules. Accordingly, the commenting parties largely responded to the *NPRM* without knowledge of the Commission's rule changes as ultimately adopted in the *Rural Report and Order.* Moreover, the *Rural Report and Order* addressed rural system EIRP increases across multiple radio services, and was not limited to part 24 broadband PCS systems. Thus, in keeping with our objective to harmonize our rules across similar services, we believe that the issue of increasing EIRP for broadband PCS licensees must be examined in the larger context of services governed by other rule parts, including cellular licensees under part 22, and 700 MHz, WCS and Advanced Wireless Services under part 27. We will explore these issues in the *FNPRM.*

20. Additionally, we note that a new dimension has been raised relative to our examination of our rules to achieve better parity among technologies. Specifically, CTIA has suggested a fundamental shift in how base station transmitter power limits are determined. Rather than simply increasing the permitted peak radiated power, CTIA asks that we change from peak to average power while implementing a power spectral density limit. While we appreciate that several major carriers and equipment manufacturers are in agreement on such an approach, we believe such a change raises a number of issues that need closer examination and for which we have little record. For example, it is not clear what impact changing from a peak power limit to an average power limit may have on services operating in other parts of the spectrum, particularly those in adjacent frequency bands. Because of the significant issues that are raised by the CTIA proposal, and although the proposal has promise, we decline to make any changes to the Commission's current radiated power rules at this time. However, we will consider this below among other issues in the *FNPRM.*

E. Proposed Modifications to Part 90

1. Frequency Coordination

21. *Background.* Section 90.175(j) includes exemptions from the general frequency coordination obligation of part 90 license applications. Previously, the Commission did not require evidence of frequency coordination to accompany applications for 800 MHz Upper 200 and Lower 80 SMR frequencies. In the 2002 biennial review proceeding, CTIA asked the Commission to expand the exceptions to the frequency coordination requirements to include the 800 MHz General Category frequencies. However, the Commission staff found that ''the possible conversion of existing site-by-site licensed general category frequencies to a different mode of operation (*e.g.*, from conventional to trunked use), and the potential shared use environment of the frequencies, makes [wholesale] elimination of the coordination requirement a concern,'' and that frequency coordination ''remains beneficial in a shared use environment to ensure efficient use and prevent interference.'' Consequently, the Commission sought comment on whether to eliminate the frequency coordination requirement for incumbent licensees operating on 800 MHz General Category frequencies on a non-shared basis, where such licensees propose new and/or modified facilities that do not expand the applicable interference contour.

22. *Discussion.* In light of the Commission's recent decision to reconfigure the 800 MHz band, we believe this issue is moot (*i.e.*, there is no longer any reason to expand the exceptions to the frequency coordination requirements to include the band 806–809.75/851–854.75 MHz). Specifically, in the *800 MHz Order,* published at 69 FR 67823, November 22, 2004, the Commission decided to separate incompatible technologies by moving enhanced specialized mobile radio (ESMR) operations to the upper portion of the 800 MHz band and putting non-ESMR operations in the lower portion of the band. Under this 800 MHz reconfiguration plan, the 806–809 MHz/851–854 MHz segment of the General Category spectrum was reallocated exclusively for site-based public safety operations. The remaining segment of the General Category spectrum, *i.e.* 806–806.75 MHz/809–809.75 MHz, is still designated as General Category spectrum.

23. Although geographic area licensees operating in this segment can remain under certain conditions pursuant to the *800 MHz Order,* it is likely that ESMR systems in this remaining segment of the General Category will relocate to the ESMR portion of the band and the 806–806.75 MHz/809–809.75 MHz segment will be used predominately for site-based systems. For example, on the channels in this segment of the General Category vacated by Nextel, applications for site-based facilities will be accepted, exclusively from public safety entities for the first three years, by public safety and CII entities for the next two years, and thereafter by any entity eligible for use of 800 MHz channels. These site-based facilities, will require frequency coordination in order to avoid interference. Therefore, we decline to adopt the proposal that § 90.175(j) be amended to exempt applications in the General Category spectrum from frequency coordination.

2. Emission Masks

24. *Background.* Section 90.210 of the Commission's rules describes several emission masks applicable to part 90 transmitters. In comments in the 2002 biennial review proceeding, Motorola notes that, while the standards imposed by this rule section generally serve the public interest by limiting unwanted emissions outside the authorized bandwidth and thus minimizing adjacent channel interference, Emission Mask G, set forth in § 90.210(g), limits design flexibility without any corresponding value in improved interference control. Motorola recommended that the Commission conform the Emission Mask G rule to the steps it has taken in recent years in adopting modulation-independent masks (emission masks D, E, and F) that place no limitation on the spectral power density profile within the maximum authorized bandwidth. The Commission sought comment on the potential benefits to the public of making this change, and whether this proposed revision would, despite Commission intent, potentially increase interference. Also, the Commission tentatively concluded that it should revise § 90.210(m) of its rules to conform to ITU Regulation S3.10, because it believed this revision will provide greater protection against interference. The Commission sought comment on this tentative conclusion.

25. *Discussion.* We adopt our tentative conclusion to conform the Emission Mask G to a modulation-independent mask that places no limitation on the spectral power density profile within

the maximum authorized bandwidth. We also revise § 90.210(m) of our rules to conform to ITU Regulation S3.10. All of the commenting parties, including CTIA, Motorola and Nextel, support the Commission's emission mask proposal. We agree with the commenters' assertion that elimination of the rule will afford greater flexibility to manufacturers and will conform this emission mask rule with other emission mask provisions applicable to part 90 services.

3. 800 MHz and 900 MHz Supplemental Information

26. *Background.* Section 90.607 of the Commission's rules describes the supplemental information that must be furnished by applicants for 800 MHz and 900 MHz SMR systems. Under paragraph (a) of this rule, applicants proposing to provide service on a commercial basis in these bands must supply, among other things, a statement of their ''planned mode of operation'' and a statement certifying that only eligible persons would be provided service on the licensee's base station facility. In comments filed in the 2002 biennial review proceeding, PCIA advocated eliminating § 90.607(a). Specifically, PCIA stated that the system diagrams that were used when the 800 MHz band was originally conceived have not been used by the Commission for years and are no longer necessary. Moreover, PCIA asserted that the eligibility statement is no longer needed because the eligibility rules for SMR end-users have been eliminated. The Commission, therefore, tentatively concluded that it should delete § 90.607(a) to eliminate the above-mentioned reporting requirements.

27. *Discussion.* We eliminate § 90.607(a) from our rules as it is no longer relevant to our regulatory scheme. The supplemental information required under this rule section was previously used in the Commission's analysis of site-based operations in the SMR service and assisted the Commission in determining to what extent single-site facilities were operating as part of a larger network. Further, prior Commission rules required that SMR end-users meet certain eligibility requirements and the Commission relied upon an applicant's separate certification regarding compliance. The Commission has shifted from site-based licensing of SMR channels to geographic-area licensing through competitive bidding, where SMR systems are routinely part of larger, integrated networks consisting of multiple transmitter sites. We therefore find it unnecessary to require applicants to provide a statement of planned mode of operation. We also agree with PCIA that the separate eligibility certification is no longer necessary as the eligibility rules for SMR users have been eliminated. We also believe meaningful competition among the various wireless services has rendered such requirements no longer necessary in the public interest and market forces should encourage applicants to operate their facilities in the proper manner without Commission involvement.

4. 800 MHz and 900 MHz Trunked Systems Loading, Construction and Authorization Requirements

28. *Background.* Section 90.631 of the Commission's rules contains various requirements for the authorization, construction, and loading of 800 MHz and 900 MHz trunked systems. PCIA and CTIA request that the Commission modify two of these requirements that they assert are no longer necessary. Section 90.631(d) of the Commission's rules allows a licensee of an 800 MHz and 900 MHz SMR trunked system to request an additional five channels than it has constructed without meeting the loading requirements if the licensee operates in a ''rural area.'' The rule defines a ''rural area'' as either (1) an area which is beyond the 100-mile radius of the designated center of urbanized areas listed in the rule, or (2) an area that has a ''waiting list.'' In comments in the 2002 biennial review proceeding, PCIA noted that waiting lists for 800 MHz and 900 MHz SMR frequencies were eliminated by the Commission in 1995 when the Commission switched to competitive bidding and geographic area licensing. As a result, PCIA requested that the Commission amend § 90.631(d) to delete the ''waiting list'' exception to the definition of a rural area. The Commission agreed with PCIA and sought comment on a tentative conclusion to delete this exception to the definition of a rural area. The Commission also sought comment on eliminating other references to waiting lists contained in § 90.631(d) of the rules.

29. Section 90.631(i) provides that an incumbent (*i.e.*, pre-auction, site-by site authorized) 900 MHz SMR licensee that has not met the loading requirements set forth in § 90.631(b) at the end of its initial five-year license term will only be granted a renewal period of two years, in which time the licensee must satisfy the loading requirements. CTIA stated that the requirement is obsolete because the ''timeframe for site-specific SMR 900 MHz systems to meet the loading requirements has since expired.'' The Commission agreed that the period of renewing incumbent 900 MHz SMR licenses subject to this requirement has ended. Therefore, the Commission tentatively concluded to eliminate paragraph (i) of § 90.631 from its rules, as well as references to paragraph (i) in § 90.631(b) of the rules.

30. *Discussion.* We adopt our tentative conclusions. We agree with all of the commenting parties, including AMTA, CTIA, Nextel, and PCIA, that support the Commission's tentative conclusion on this issue urging the Commission to eliminate both the loading requirement and references to the ''waiting list'' in § 90.631(d) of the rules and to eliminate § 90.631(i), which is no longer necessary since the 900 MHz SMR renewal period it references has long passed. These rules are no longer relevant to our regulatory scheme.

5. 800 MHz and 900 MHz Power and Antenna Height

31. *Background.* Section 90.635 of our rules sets forth the limitations on power and antenna height for 800 MHz and 900 MHz systems. In its comments in the 2002 biennial review proceeding, PCIA asked the Commission to modify or eliminate the restrictions placed on two particular types of 800 MHz and 900 MHz systems—those located in ''suburban'' areas as defined in the rule and those whose service area requirements are less than 32 kilometers.

32. First, § 90.635(a)–(c) differentiates between ''urban'' and ''suburban'' conventional (*i.e.*, non-trunked) systems, allowing a greater maximum power (1000 watts vs. 500 watts ERP) at a given antenna height above average terrain for urban conventional systems than suburban conventional systems. The 90.635 chart (Table 2) limits maximum radiated power on a sliding scale based upon antenna height above average terrain. For example, urban conventional systems and all trunked systems are permitted to operate with a radiated power of 65 Watts ERP with an antenna height above average terrain of 4500 feet and above to a maximum of 1000 Watts ERP from an antenna height above average terrain of no greater than 1000 feet. In contrast, suburban conventional licensees are limited to a maximum power of 15 Watts ERP with an antenna height above average terrain of 4500 feet and above to a maximum of 500 Watts ERP from an antenna height above average terrain of no greater than 500 feet. PCIA argued that such a distinction ''no longer serves a useful purpose and should be eliminated.'' PCIA justified this conclusion by asserting that suburban

systems frequently must cover larger service areas than urban systems, and therefore, a smaller maximum power limit economically restricts the ability of these licensees to serve the suburban areas. Moreover, PCIA asserted that the restrictions on suburban sites also prevent these licensees from counteracting interference from cellular systems to the same extent as urban sites. The Commission sought comment on PCIA's proposal to modify § 90.635 to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems, stating that it believed there is a significant question as to whether the justification for such distinction remains relevant in today's marketplace.

33. Second, PCIA asked the Commission to eliminate the power restrictions on 800 MHz and 900 MHz systems with an operational radius of less than 32 kilometers in radius. PCIA stated that although it ''appreciates the Commission's original goal to maximize the number of radio systems that could be accommodated on a single frequency, by limiting the ERP of small footprint systems,'' the possibility of additional channel use is effectively prohibited by the requirement in § 90.621(b)(4) that applicants protect all existing stations as if the incumbent system was operating at 1000 watts ERP. PCIA also asserted that the power limitation prevents these smaller systems from limiting interference from cellular systems. Therefore, PCIA requested that the power limitations on 800 MHz and 900 MHz systems with an operational radius below 32 kilometers be eliminated. The Commission sought comment on this proposal and asked that interested parties address the use of such systems in light of the Commission's original goal of increasing the use of single frequencies, and whether lifting of these restrictions will help eliminate interference from cellular systems.

34. *Discussion.* We adopt PCIA's proposal to modify § 90.635 to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems and eliminate power limitations on systems with operational radii of less than 32 kilometers. All of the commenting parties, including AMTA, CTIA, Motorola, NAM/MRFAC, Nextel, and PCIA support the PCIA proposal. We agree with AMTA that several decades of experience have confirmed that there is no bright line distinction between the operational requirements of systems in these two areas. AMTA contends that suburban facilities arguably could require greater power since they might need to cover larger geographic areas than their urban counterparts. AMTA argues that this rule is not needed to protect against inter-system interference in these bands and has not proven reflective of the real world operational requirements of operators. In that regard, CTIA contends that under the current rule, an ''urban'' system operating 24 km from the geographic center of the top 50 urbanized areas could operate with a higher power and antenna height than a system located 25 km from an urban center, which would instead be classified as a ''suburban'' system. CTIA argues that such a bright-line distinction makes little, if any, sense from an engineering perspective. Furthermore, CTIA argues, the existence of the ''urban'' versus ''suburban'' thresholds increases infrastructure and compliance costs, without providing any countervailing public interest benefit.

35. With regard to the reduced power requirements for this type of system, Motorola notes that the reduced power requirements may affect coverage well within the 32-kilometer service border by providing reduced building penetration. However, PCIA argues that such restrictions in today's operating environment should not lead to any allocations of additional spectrum for other licensees. Specifically, PCIA continues, since § 90.621(b)(4) requires that licensees be protected at 1000 watts ERP, even if the station is licensed for less, the reduced ERP for such systems provides no spectrum benefit. PCIA contends that conversely, the reduced ERP makes some operations more difficult for these types of systems. For example, PCIA continues, airlines do not serve a large operational area, but must be able to communicate into the lower reaches of terminal buildings. PCIA contends that the ERP limits of § 90.635 restrict the ability of airlines to serve these areas. PCIA also argues that one of the most effective means of coping with in-band interference is to increase the signal level of the desired signal. In other words, PCIA argues, a private radio or public safety licensee, experiencing interference from an adjacent channel cellular system, should increase the signal level of their system to override the cellular interference. PCIA states that in the context of these systems, constructing an additional transmitter site is an expensive and needless solution. Further, PCIA states that in the context of an airport facility, constructing an additional transmitter site is often not an option. PCIA claims that no licensees would be harmed by the ability of a licensee to utilize increased ERP, and such licensees should have the operational flexibility to utilize an ERP that does not cause interference to co-channel users. We agree.

6. System Authorization Limit in Geographic Areas

36. *Background.* Section 90.653 of the rules states that ''[t]here shall be no limit on the number of systems authorized to operate in any one given area except that imposed by allocation limitations.'' The Commission adopted this rule in 1982 pursuant to its decision to not restrict equipment manufacturers from holding 800 MHz SMR licenses. CTIA asserted that ''[t]he rule is redundant and no longer serves any regulatory purpose.'' Based on the fact that it has licensed and will continue to license 800 and 900 MHz SMR frequencies using competitive bidding for geographic-area authorizations, the Commission agreed with CTIA that this rule is no longer in the public interest. Therefore, the Commission tentatively concluded that § 90.653 should be removed. The Commission sought comment on this tentative conclusion.

37. *Discussion.* We adopt our tentative conclusion and eliminate § 90.653 of our rules. We agree with all of the commenting parties, including AMTA, CTIA, and Nextel, that support the Commission's tentative conclusion that rule § 90.653 is redundant ''and no longer serves any regulatory purpose'' due to the Commission's general shift to competitive bidding for geographic area licensing in most cases.

7. Reporting Requirement for Trunked SMR Loading Data

38. *Background.* Section 90.658 of the Commission's rules provides that site-based licensees of trunked SMR systems licensed before June 1, 1993 must provide loading data in order to either acquire additional channels or renew their authorizations. Both PCIA and CTIA noted that all SMR licenses issued prior to June 1, 1993 have now been through at least one renewal period and, therefore, advocated eliminating the rule. The Commission staff found that this provision may be an outdated and burdensome requirement on SMR licensees, especially in light of the competition among cellular, PCS, and 800/900 MHz SMR services. Accordingly, the Commission tentatively concluded that it will eliminate § 90.658 as no longer necessary in the public interest.

39. *Discussion.* We adopt our tentative proposal and eliminate § 90.658. The

Commission previously stated in the *CMRS Third Report and Order*, published at 59 FR 59945, November 21, 1994, that loading requirements are ''one of the mechanisms we employ under our rules to ensure that mobile service licensees make efficient use of spectrum and offer service to customers within their service area.'' Previously, SMR licensees were required to meet mobile loading requirements to obtain exclusive use of existing channels, obtain additional channels, serve areas within 40 miles of existing channels, and avoid automatic cancellation of authorization for unloaded channels at renewal. However, the Commission eliminated mobile loading requirements for CMRS licensees in the *CMRS Third Report and Order* and we eliminate § 90.658 consistent with that action. We also note that all of the commenting parties, including CTIA, Nextel and PCIA, support the Commission's tentative conclusion to eliminate § 90.658 because competitive market forces among wireless services have replaced the need to closely monitor traffic loading on SMR systems.

8. Grandfathering Provisions for 800 MHz SMR Incumbent Licensees

40. *Background.* In general, § 90.621(b) requires a fixed mileage separation of 113 km (70 miles) between co-channel 800 and 900 MHz systems. However, § 90.621(b)(4) provides that co-channel stations may be separated by less than 113 km (70 miles) by meeting certain transmitter ERP and antenna height criteria, as listed in the Commission's ''Short-Spacing Separation Table.'' Previously, engineering showings were submitted with applications demonstrating that a certain addition or modification would not cause interference to other licensees, even though the stations would be spaced less than 70 mi (113 km) apart. Currently, stations meeting the parameters set forth in the Short-Spacing Separation Table need not submit an engineering analysis demonstrating interference protection to co-channel licensees. Section 90.693 of the Commission's rules requires that 800 MHz incumbent SMR licensees ''notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria.'' It has been standard practice for incumbents to notify the Commission of all changes and additional stations constructed in cases where such stations are in fact located less than the required 70 mile distance separation, and are therefore technically ''short-spaced,'' but are in fact fully compliant with the parameters of the Commission's Short-Spacing Separation Table.

41. *Discussion.* Although we did not propose in the *NPRM* to revise § 90.693, we will delete § 90.693's notification requirement for incumbents wishing to locate stations closer than the minimum distance separation rules allow, but that fall within the parameters of the Short-Spacing Separation Table under § 90.621 of our rules. Because incumbents are not allowed under the rules to expand their interference contours, this approach will not lead to interference among licensees.

42. Although we eliminate a substantial number of filings to reduce burdens on licensees, we clarify that notification of minor modifications within 30 days will still be required under § 90.693 in two areas involving short-spaced systems. First, § 90.621(b)(4) allows stations to be licensed at distances less than those prescribed in the Short-Spacing Separation Table where applicants ''secure a waiver.'' Second, § 90.621(b)(5) permits stations to be located closer than the required separation, so long as the applicant provides letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between systems.

9. 220 MHz Phase I Supplemental Progress Reports

43. *Background.* Section 90.737 of the Commission's rules sets forth the supplemental progress reports that 220 MHz Phase I licensees must file with the Commission. The Commission staff recommended that the Commission consider whether certain rules applicable to 220 MHz Phase I licensees continue to be necessary in the public interest in light of increased competition among commercial mobile radio services (CMRS) providers. In particular, staff identified section 90.737 as imposing certain reporting requirements and restrictions on assignments of unconstructed, site-based, 220 MHz Phase I licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery. The Commission tentatively concluded that § 90.737 should be eliminated as no longer necessary in the public interest given recent competitive and other developments. The Commission sought comment on this tentative conclusion.

44. *Discussion.* We adopt our tentative conclusion to eliminate § 90.737. Licensing by lottery has been eliminated in the 220 MHz Service and a continuation of these reporting requirements may ''impede the transferability of 220 MHz spectrum'' in a competitive CMRS marketplace. Both commenting parties, AMTA and CTIA support the Commission's tentative conclusion to eliminate § 90.737 because ''future 220 MHz licenses will be awarded by auction, not lottery'' and the rule is no longer needed to prevent trafficking in unconstructed stations.

F. Corrections and Updates to WRS Rules

45. In the *NPRM*, we described a series of administrative changes we proposed to make in this *Report and Order*. Generally, the changes entail correcting, updating, and eliminating various rules in parts 1, 22, 24, 27, and 90. We received no comment on any of the proposed administrative changes. Consequently, based on the record before us, we adopt those administrative changes. The specific administrative changes are as follows:

- Part 1, subpart F—Title. Correct the term ''Wireless Telecommunications Services'' to read ''Wireless Radio Services.''
- Section 1.927(g). Replace the cross-reference to § 1.948(h)(2) with § 1.948(i)(2).
- Section 1.939(b). Eliminate the third sentence which states that manually filed petitions to deny can be filed at the Commission's former office location.
- Section 1.955(a)(2). Replace the cross-reference to § 1.948(c) with § 1.946(c).
- Section 22.946(b)(2). Replace the reference to Form 489 with Form 601.
- Section 22.946(c). Replace the cross-reference to § 22.144(b) with § 1.955.
- Section 22.947(c). Update the location for filing a cellular system information update (SIU) to ''Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 12th Street, SW., Washington, DC 20554.''
- Section 22.948(d). Delete the cross-reference to § 22.144(a).
- Section 22.949(d). Replace the cross-reference to § 22.122 with § 1.927.
- Section 22.953(b). Replace the cross-reference to § 1.929(h) with § 1.929(a)–(b).

Finally, we also received a request from Motorola to address the station identification rules applicable to 700 MHz public safety licensees. Specifically, Motorola contends that unlike the rules for 800 MHz public safety licensees operating digital transmitting equipment on exclusive channels, the rules do not explicitly

provide similarly situated 700 MHz licensees with the ability to transmit their station identification in the digital mode. We note that the Commission recently sought comment on this issue in another proceeding.

G. Procedural Matters

1. Final Regulatory Flexibility Certification

46. The Regulatory Flexibility Act of 1980, as amended (RFA) (*See* 5 U.S.C. 601–612) requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

47. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*, which commenced a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Certification conforms to the RFA.

48. This *Report and Order* adopts several measures intended to streamline and harmonize certain licensing provisions in the wireless radio services (WRS) and further Commission efforts to maintain clear spectrum rights and obligations for these licensees, fulfill the Commission's mandate under section 11 of the Communications Act to conduct biennial reviews, support recent efforts to maximize the public benefits derived from the use of the radio spectrum, and increase the ability of wireless service providers to use licensed spectrum resources flexibly and efficiently to offer a variety of services in a cost-effective manner.

49. The *Report and Order* resolves the question of whether relevant provisions should be (1) streamlined as a result of competitive, technological, or subsequent administrative rule changes and/or (2) harmonized because they treat similarly situated services differently. The Order accomplishes this primarily by eliminating provisions when necessary and modifying provisions when appropriate. For example, as we have done in recent years in adopting modulation-independent masks (emission masks D, E, and F), we conform the Emission Mask G rule to the others and place no limitation on the spectral power density profile within the maximum authorized bandwidth. This action, supported by all commenting parties, will improve design flexibility while maintaining interference control, thus creating, we believe, no significant adverse economic impact.

50. Also, we modified our rules to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems. Our experience has been that there is no bright line distinction between the operational requirements of urban and suburban systems. In fact, because they might need to cover larger geographic areas than their urban counterparts, suburban facilities arguably could require greater power. In general, we found that ''urban'' versus ''suburban'' thresholds actually increase infrastructure and compliance costs, without providing any countervailing public interest benefit. We found that removing those distinctions might actually eliminate or significantly reduce those compliance costs. Therefore, we certify that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

2. Congressional Review Act

51. The Commission will send a copy of the *Report and Order*, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act (*See* 5 U.S.C. 801(a)(1)(A)). In addition, the *Report and Order* and the final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register** (*See* 5 U.S.C. 605(b)).

3. Paperwork Reduction Act of 1995

52. This document does not contain any proposed, new, or modified information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. *See* 44 U.S.C. 3506(c)(4).

4. Contact Information

53. The primary Wireless Telecommunications Bureau contacts for this proceeding are Wilbert E. Nixon, Jr., and B.C. ''Jay'' Jackson, Jr. of the Wireless Telecommunications Bureau's Mobility Division (202–418–0620). Press inquiries should be directed to Chelsea Fallon, Wireless Telecommunications Bureau, at (202) 418–7991, TTY at (202) 418–7233, or e-mail at *Chelsea.Fallon@fcc.gov*.

IV. Ordering Clauses

54. Pursuant to the authority of sections 4(i), 7, 11, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes specified in the *Report and Order are adopted*.

55. The rule changes set forth in the *Report and Order will become effective* 60 days after publication in the **Federal Register**.

56. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and Recordkeeping requirements, Telecommunications.

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 27

Wireless communications services.

47 CFR Part 90

Business and industry, Common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ Parts 1, 22, 24, 27, and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. The heading of Subpart F is revised to read as follows:

Subpart F—Wireless Radio Services Applications and Proceedings

■ 3. Section 1.927 is amended by revising paragraph (g) to read as follows:

§ 1.927 Amendment of applications.

* * * * *

(g) Where an amendment to an application specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant, the applicant must provide an exhibit with the amendment application containing an affirmative, factual showing as set forth in § 1.948(i)(2).

* * * * *

■ 4. Section 1.929 is amended by revising paragraph (c) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(c) In addition to those changes listed in paragraph (a) in this section, the following are major changes applicable to stations licensed to provide base-to-mobile, mobile-to-base, mobile-to-mobile on a site-specific basis:

(1) In the Paging and Radiotelephone Service, Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service (SMR), any change that would increase or expand the applicant's existing composite interference contour.

(2) In the 900 MHz SMR and 220 MHz Service, any change that would increase or expand the applicant's service area as defined in the rule parts governing the particular radio service.

(3) In the Paging and Radiotelephone Service, Rural Radiotelephone Service, Offshore Radiotelephone Service, and Specialized Mobile Radio Service:

(i) Request an authorization or an amendment to a pending application that would establish for the filer a new fixed transmission path;

(ii) Request an authorization or an amendment to a pending application for a fixed station (i.e., control, repeater, central office, rural subscriber, or inter-office station) that would increase the effective radiated power, antenna height above average terrain in any azimuth, or relocate an existing transmitter;

(4) In the Private Land Mobile Radio Services (PLMRS), the remote pickup broadcast auxiliary service, and GMRS systems licensed to non-individuals;

(i) Change in frequency or modification of channel pairs, except the deletion of one or more frequencies from an authorization;

(ii) Change in the type of emission;

(iii) Change in effective radiated power from that authorized or, for GMRS systems licensed to non-individuals, an increase in the transmitter power of a station;

(iv) Change in antenna height from that authorized;

(v) Change in the authorized location or number of base stations, fixed, control, except for deletions of one or more such stations or, for systems operating on non-exclusive assignments in GMRS or the 470–512 MHz, 800 MHz or 900 MHz bands, a change in the number of mobile transmitters, or a change in the area of mobile transmitters, or a change in the area of mobile operations from that authorized;

(vi) Change in the class of a land station, including changing from multiple licensed to cooperative use, and from shared to unshared use.

* * * * *

■ 5. Section 1.939 is amended by revising paragraph (b) to read as follows:

§ 1.939 Petitions to deny.

* * * * *

(b) *Filing of petitions.* Petitions to deny and related pleadings may be filed electronically via ULS. Manually filed petitions to deny must be filed with the Office of the Secretary, 445 Twelfth Street, SW., Room TW–B204, Washington, DC 20554. Attachments to manually filed applications may be filed on a standard 31/4″ agnetic diskette formatted to be readable by high density floppy drives operating under MS-DOS (version 3.X or later compatible versions). Each diskette submitted must contain an ASCII text file listing each filename and a brief description of the contents of each file on the diskette. The files on the diskette, other than the table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible. Petitions to deny and related pleadings must reference the file number of the pending application that is the subject of the petition.

* * * * *

■ 6. Section 1.955 is amended by revising paragraph (a)(2) to read as follows:

§ 1.955 Termination of authorizations.

(a) * * *

(2) *Failure to meet construction or coverage requirements.* Authorizations automatically terminate, without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements. *See* § 1.946(c) of this part.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

■ 7. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

■ 8. Section 22.303 is revised to read as follows:

§ 22.303 Retention of station authorizations; identifying transmitters.

The current authorization for each station, together with current administrative and technical information concerning modifications to facilities pursuant to § 1.929 of this chapter, and added facilities pursuant to § 22.165 must be retained as a permanent part of the station records. A clearly legible photocopy of the authorization must be available at each regularly attended control point of the station, or in lieu of this photocopy, licensees may instead make available at each regularly attended control point the address or location where the licensee's current authorization and other records may be found.

■ 9. Section 22.947 is amended by revising paragraph (c) introductory text to read as follows:

§ 22.947 Five year build-out period.

* * * * *

(c) *System information update.* Sixty days before the end of the five year build-out period, the licensee of each cellular system authorized on each channel block in each cellular market must file, in triplicate, a system information update (SIU), comprising a full size map, a reduced map, and an exhibit showing technical data relevant to determination of the system's CGSA. Separate maps must be submitted for each market into which the CGSA extends, showing the extension area in the adjacent market. Maps showing extension areas must be labeled (*i.e.* marked with the market number and channel block) for the market into which the CGSA extends. SIUs must accurately depict the relevant cell locations and coverage of the system at the end of the five year build-out period. SIUs must be filed at the Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 12th Street, SW., Washington, DC 20554. If any changes to the system occur after the filing of the SIU, but before the end of the five year

build-out period, the licensee must file, in triplicate, additional maps and/or data as necessary to insure that the cell locations and coverage of the system as of the end of the five year build-out period are accurately depicted.

■ 10. Section 22.948 is amended by revising paragraph (d) to read as follows:

§ 22.948 Partitioning and Disaggregation.

* * * * *

(d) *License Term.* The license term for the partitioned license area and for disaggregated spectrum shall be the remainder of the original cellular licensee's or the unserved area licensee's license term.

■ 11. Section 22.949 is amended by revising paragraph (d) introductory text to read as follows:

§ 22.949 Unserved area licensing process.

* * * * *

(d) *Limitations on amendments.* Notwithstanding the provisions of § 1.927 of this chapter, Phase I applications are subject to the following additional limitations in regard to the filing of amendments.

* * * * *

■ 12. Section 22.953 is amended by revising paragraph (b) and (c) to read as follows:

§ 22.953 Content and form of applications.

* * * * *

(b) *Existing systems—major modifications.* Licensees making major modifications pursuant to § 1.929(a) and (b) of this chapter, must file FCC Form 601 and need only contain the exhibits required by paragraphs (a)(1) through (a)(3) of this section.

(c) *Existing systems—minor modifications.* Licensees making minor modifications pursuant to § 1.929(k) of this chapter—in which the modification causes a change in the CGSA boundary (including the removal of a transmitter or transmitters)—must notify the FCC (using FCC Form 601) and include full-sized maps, reduced maps, and supporting engineering exhibits as described in paragraphs (a)(1) through (3) of this section. If the modification involves a contract SAB extension, it must include a statement as to whether the five-year build-out for the system on the relevant channel block in the market into which the SAB extends has elapsed, and as to whether the SAB extends into any unserved area in that market.

PART 24—PERSONAL COMMUNICATIONS SERVICES

■ 13. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

■ 14. Section 24.12 is revised to read as follows:

§ 24.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

■ 15. Section 24.232 is revised to read as follows:

§ 24.232 Power and antenna height limits.

(a) Base stations are limited to 1640 watts peak equivalent isotropically radiated power (EIRP) with an antenna height up to 300 meters HAAT, except as described in paragraph (b) below. *See* § 24.53 for HAAT calculation method. Base station antenna heights may exceed 300 meters with a corresponding reduction in power; *see* Table 1 of this section. The service area boundary limit and microwave protection criteria specified in §§ 24.236 and 24.237 apply.

TABLE 1.—REDUCED POWER FOR BASE STATION ANTENNA HEIGHTS OVER 300 METERS

HAAT in meters	Maximum EIRP watts
≤ 300	1640
≤ 500	1070
≤ 1000	490
≤ 1500	270
≤ 2000	160

(b) Base stations that are located in counties with population densities of 100 persons or fewer per square mile, based upon the most recently available population statistics from the Bureau of the Census, are limited to 3280 watts peak equivalent isotropically radiated power (EIRP) with an antenna height up to 300 meters HAAT; *See* § 24.53 for HAAT calculation method. Base station antenna heights may exceed 300 meters with a corresponding reduction in power; *see* Table 2 of this section. The service area boundary limit and microwave protection criteria specified in §§ 24.236 and 24.237 apply. Operation under this paragraph must be coordinated in advance with all PCS licensees within 120 kilometers (75 miles) of the base station and is limited to base stations located more than 120 kilometers (75 miles) from the Canadian border and more than 75 kilometers (45 miles) from the Mexican border.

TABLE 2.—REDUCED POWER FOR BASE STATION ANTENNA HEIGHTS OVER 300 METERS

HAAT in meters	Maximum EIRP watts
≤ 300	3280
≤ 500	2140
≤ 1000	980
≤ 1500	540
≤ 2000	320

(c) Mobile/portable stations are limited to 2 watts EIRP peak power and the equipment must employ means to limit the power to the minimum necessary for successful communications.

(d) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

§ 24.843 [Removed]

■ 16. Section 24.843 is removed.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 17. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 18. Section 27.3 is amended by redesignating paragraphs (o) and (p) as (p) and (q) and adding new paragraph (o) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(o) *Part 74.* This part sets forth the requirements and conditions applicable to experimental radio, auxiliary, special broadcast and other program distributional services.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 19. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

§ 90.20 [Amended]

■ 20. Amend § 90.20 as follows:

■ a. Amend the Public Safety Pool Frequency Table of Section 90.20(c)(3) (Frequencies.) by revising the entries for frequencies 35.02, 156.1725, 156.1875, 156.195, 156.2025, 156.2325, 158.9925, 159.0075, 159.0225, 159.0525, 159.0675, 159.0825, 159.1125, 159.1275, 159.135, 159.1425, 159.1725, 155.325, 155.3325, 155.355, 155.3625, 155.385, 155.3925, 155.400, 155.4075, 462.950, 462.95625, 462.9625, 462.96875, 462.975, 462.98125, 462.9875, and 462.99375 Megahertz to read as set forth below;

■ b. Remove and reserve paragraph (d)(38); and

■ c. The entries for 467.950, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875 and 467.99375 Megahertz are amended by removing limitation 38 and adding in its place 10.

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or brand	Class of station(s)	Limitations	Coordinator
Megahertz			
* * *	* * *		*
35.02	Mobile	12, 78	PS
* * *	* * *		*
155.325	do	10, 39	PM
155.3325	do	27, 10, 39	PM
* * *	* * *		*
155.355	do	10, 39	PM
155.3625	do	27, 10, 39	PM
* * *	* * *		*
155.385	do	10, 39	PM
155.3925	do	27, 10, 39	PM
155.400	do	10, 39	PM
155.4075	do	27, 10, 39	PM
* * *	* * *		*
156.1725	do	27, 42	PH
* * *	* * *		*
156.1875	do	27, 42	PH
156.195	do		PH
156.2025	do	27	PH
* * *	* * *		*
156.2325	do	27, 10	PH
* * *	* * *		*
158.9925	do	27	PH
* * *	* * *		*
159.0075	do	27	PH
* * *	* * *		*
159.0225	do	27	PH
* * *	* * *		*
159.0525	do	27	PH
* * *	* * *		*
159.0675	do	27	PH
* * *	* * *		*
159.0825	do	27	PH
* * *	* * *		*
159.1125	do	27	PH
* * *	* * *		*
159.1275	do	27	PH
159.135	do		PH
159.1425	do	27	PH
* * *	* * *		*
159.1725	do	27, 43	PH
* * *	* * *		*
462.950	Base or mobile	10, 65	PM

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or brand	Class of station(s)	Limitations	Coordinator
462.95625	.....do	10, 44, 65	PM
462.9625	.....do	27, 10, 65	PM
462.96875	.....do	10, 44, 65	PM
462.975	.....do	10, 65	PM
462.98125	.....do	10, 44, 65	PM
462.9875	.....do	27, 10, 65	PM
462.99375	.....do	10, 44, 65	PM
* * * * * * *			

* * * * *

§ 90.35 [Amended]

■ 21. Section 90.35 is amended by removing one of the duplicate entries of ''Frequency 35.48 Megahertz'' of the Industrial/Business Pool Frequency Table of paragraph (b)(3) and by removing and reserving paragraph (c)(45).

■ 22. Section 90.149 is amended by revising paragraph (a) and removing paragraph (d) to read as follows:

§ 90.149 License term.

(a) Except as provided in subpart R of this part, licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance or renewal.

* * * * *

■ 23. Section 90.175 is amended by revising paragraph (j) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications for frequencies below 25 MHz.

(2) Applications for a Federal Government frequency.

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to § 90.35(c)(77).

(4) Applications for a frequency to be used for developmental purposes.

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations, and applications requesting operation on 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

(6) Applications in the Radiolocation Service.

(7) Applications filed exclusively to modify channels in accordance with band reconfiguration in the 806–824/851–869 band.

(8) Applications for frequencies listed in the SMR tables contained in §§ 90.617 and 90.619.

(9) Applications indicating license assignments such as change in ownership, control or corporate structure if there is no change in technical parameters.

(10) Applications for mobile stations operating in the 470–512 MHz band, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

(12) Applications for control stations operating below 470 MHz, 764–776/794–806 MHz, or above 800 MHz and meeting the requirements of § 90.119(b).

(13) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

(14) Applications for a state license under § 90.529.

(15) Applications for narrowband low power channels listed for itinerant use in § 90.531(b)(4).

(16) Applications for DSRCS licenses (as well as registrations for Roadside Units) in the 5850–5925 GHz band.

(17) Applications for the deletion of a frequency and/or transmitter site location.

■ 24. Section 90.210 is amended by removing paragraph (g)(1) and redesignating paragraphs (g)(2) and (g)(3) as paragraphs (g)(1) and (g)(2), and by revising paragraph (o) to read as follows:

§ 90.210 Power and antenna height limits.

* * * * *

(o) *Instrumentation.* The reference level for showing compliance with the emission mask shall be established, except as indicated in §§ 90.210 (d), (e), and (k), using standard engineering practices for the modulation characteristic used by the equipment under test. When measuring emissions in the 150–174 MHz and 421–512 MHz bands the following procedures will apply. A sufficient number of sweeps must be measured to insure that the emission profile is developed. If video filtering is used, its bandwidth must not be less than the instrument resolution bandwidth. For frequencies more than 50 kHz removed from the edge of the authorized bandwidth a resolution of at least 100 kHz must be used for frequencies below 1000 MHz. Above 1000 MHz the resolution bandwidth of the instrumentation must be at least 1 MHz. If it can be shown that use of the above instrumentation settings do not accurately represent the true interference potential of the equipment under test, then an alternate procedure may be used provided prior Commission approval is obtained.

§ 90.607 [Amended]

■ 24a. Section 90.607 is amended by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d).

■ 25. Section 90.631 is amended by revising paragraphs (b) and (d) and removing paragraph (i) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(b) Each applicant for a non-SMR trunked system must certify that a minimum of seventy (70) mobiles for each channel authorized will be placed into operation within five (5) years of the initial license grant.

* * * * *

(d) In rural areas, a licensee of a trunked system may request to increase its system capacity by five more channels than it has constructed without meeting the loading requirements specified in paragraphs (b) and (c) of this section. A rural area is defined for purposes of this section as being beyond a 100-mile radius of the designated centers of the following

urbanized areas: New York, NY; Los Angeles, CA; Chicago, IL; Philadelphia, PA: San Francisco, CA; Detroit, MI; Boston, MA; Houston, TX; Washington, DC; Dallas-Fort Worth, TX; Miami, FL; Cleveland, OH; St. Louis, MO; Atlanta, GA; Pittsburgh, PA; Baltimore, MD; Minneapolis-St. Paul, MN; Seattle, WA; San Diego, CA; and Tampa-St. Petersburg, FL. The coordinates for the centers of these areas are those referenced in § 90.635, except that the coordinates (referenced to North American Datum 1983 (NAD83)) for Tampa-St. Petersburg are latitude 28°00′1.1″ N, longitude 82°26′59.3″ W.

* * * * *

■ 26. Section 90.635 is revised read as follows:

§ 90.635 Limitations on power and antenna height.

(a) The effective radiated power and antenna height for base stations may not exceed 1 kilowatt (30 dBw) and 304 m. (1,000 ft.) above average terrain (AAT), respectively, or the equivalent thereof as determined from the Table. These are maximum values, and applicants will be required to justify power levels and antenna heights requested.

(b) The maximum output power of the transmitter for mobile stations is 100 watts (20 dBw).

TABLE.—EQUIVALENT POWER AND ANTENNA HEIGHTS FOR BASE STATIONS IN THE 851–869 MHZ AND 935–940 MHZ BANDS WHICH HAVE A REQUIREMENT FOR A 32 KM (20 MI) SERVICE AREA RADIUS

Antenna height (ATT) meters (feet)	Effective radiated power (watts) [1 2 4]
Above 1,372 (4,500)	65
Above 1,220 (4,000) to 1,372 (4,500)	70
Above 1,067 (3,500) to 1,220 (4,000)	75
Above 915 (3,000) to 1,067 (3,500)	100
Above 763 (2,500) to 915 (3,000)	140
Above 610 (2,000) to 763 (2,500)	200
Above 458 (1,500) to 610 (2,000)	350
Above 305 (1,000) to 458 (1,500)	600
Up to 305 (1,000)	[3] 1,000

[1] Power is given in terms of effective radiated power (ERP).

[2] Applicants in the Los Angeles, CA, area who demonstrate a need to serve both the downtown and fringe areas will be permitted to utilize an ERP of 1 kw at the following mountaintop sites: Santiago Park, Sierra Peak, Mount Lukens, and Mount Wilson.

[3] Stations with antennas below 305 m (1,000 ft) (AAT) will be restricted to a maximum power of 1 kw (ERP).

[4] Licensees in San Diego, CA, will be permitted to utilize an ERP of 500 watts at the following mountaintop sites: Palomar, Otay, Woodson and Miguel.

§ 90.653 [Removed]

■ 27. Section 90.653 is removed.

§ 90.658 [Removed]

■ 28. Section 90.658 is removed.

§ 90.693 [Removed]

■ 29. Section 90.693 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

* * * * *

(b) *Spectrum blocks A through V.* An incumbent licensee's service area shall be defined by its originally licensed 40 dBμV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual height of the antenna above average terrain (HAAT) along each radial. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBμV/m field strength contour without prior notification to the Commission so long as their original 22 dBμV/m field strength contour is not expanded. Incumbent licensee protection extends only to its 40 dBμV/m signal strength contour. Pursuant to the minor modification notification procedures set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any change in technical parameters for stations that are authorized under a waiver of 90.621(b)(4), or that are authorized under 90.621(b)(5).

(c) Special provisions for spectrum blocks F1 through V. Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded. Incumbent licensee protection extends only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedures set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any change in technical parameters for stations that are authorized under a waiver of 90.621(b)(4), or that are authorized under 90.621(b)(5).

* * * * *

§ 90.737 [Removed]

■ 30. Section 90.737 is removed.

■ 31. Section 90.743 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 90.743 Renewal expectancy.

(a) All licensees seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 1.949 of this chapter. Licensees must demonstrate, in their application, that:

* * * * *

(c) Phase I non-nationwide licensees have license terms of 10 years, and therefore must meet these requirements 10 years from the date of initial authorization in order to receive a renewal expectancy. Phase I nationwide licensees and all Phase II licensees have license terms of 10 years, and therefore must meet these requirements 10 years from the date of initial authorization in order to receive a renewal expectancy.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263-5263-01; I.D. 093005A]

RIN 0648 AU00

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the inseason adjustments that became effective on October 1, 2005. The inseason adjustment contained an error in the limited entry trawl trip limit table, Table 3 (South), on page 58076. The trip limit for petrale sole on line 16 should have been closed only south of 38° N. lat., as stated in the preamble, rather than south of 40°10′ N. lat. as depicted in the table. These regulations implemented changes to the 2005–2006 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California.

DATES: Effective 0001 hours (local time) October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–4646; fax: 206–526–6736 and; e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This correcting notification also is accessible via the Internet at the Office of the Federal Register's website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region website *http://www.nwr.noaa.govlsustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org*.

Background

The regulations that are the subject of this correction are at 50 CFR 660, subpart G. These regulations affect persons operating in the limited entry trawl fishery for groundfish species off the U.S. West Coast.

Need for Correction

As published, the inseason adjustment contained an error which needs to be corrected. This action provides one correction to the inseason adjustment. The inseason adjustment published in the **Federal Register** on October 5, 2005 (70 FR 58066), contained an error in the limited entry trawl trip limit table, Table 3 (South), on page 58076. The trip limit for petrale sole on line 16 should have been closed only south of 38° N. lat., as stated in the preamble, rather than south of 40°10′ N. lat. as depicted in the table.

As stated in the preamble to the inseason adjustment (70 FR 58066, October 5, 2005), the Pacific Fishery Management Council (Pacific Council) recommended at its September 18–23, 2005, meeting in Portland, OR, that NMFS implement a seaward limited entry trawl Rockfish Conservation Area (RCA) boundary line approximating the 250–fm (457-m) depth contour coastwide in order to nearly eliminate the catch of petrale sole. However, NMFS was not able to implement this line south of 38° N. lat. to the U.S./Mexico border because there are no coordinates for this line in Federal regulations. In order to be used as boundary lines for inseason groundfish management, coordinates must be published in Federal regulations at 50 CFR Part 660. Therefore, in order to implement the intent of the Pacific Council recommendation as much as possible, NMFS implemented a boundary line approximating the 200–fm (366–m) depth contour and a prohibition on the retention of petrale sole in this area during October. Because there is catch of petrale between 200–fm (366–m) and 250–fm (457–m), including some targeting on petrale sole, moving the RCA boundary line from 150–fm (274–m) to 200–fm (366–m) for October through December would likely not keep total catch of petrale sole within its ABC/OY for the year. A reduction of the petrale sole trip limit during the middle of a cumulative trip limit period (in this case, September through October) would make enforcement of such limits difficult. Mid-cumulative trip limit reductions are difficult to enforce because some fishers may have already achieved the higher limits earlier in the period while others who have not achieved their limit previously are restricted to the lower limits. It is difficult to query a paper-based fish landing ticket system mid-cumulative limit period to see if a fisher is in violation. Thus, NMFS determined that a closure is the best method for achieving the goals of this action. Therefore, in addition to the line change, NMFS also implemented a prohibition on the retention of petrale sole between 38° N. lat. and the U.S./Mexico border during the month of October in order to prevent targeting on petrale sole. During November and December, the Pacific Council recommendation of decreasing the trip limit for petrale sole to 2,000 lb (0.9 mt) per 2 months was determined to be sufficient to allow retention of incidentally caught petrale sole while not encouraging targeting. Therefore, while the analysis suggested a prohibition on the retention of petrale sole between 38° N. lat. and the U.S./Mexico border during the month of October, the trip limit table, Table 3 (South), mistakenly showed the prohibition on the retention of petrale sole between 40°10′ N. lat. and the U.S./Mexico border during the month of October. This was an inadvertent mistake resulting from the design of the trip limit table (i.e., trip limits for a species in Table 3 (South) apply between 40°10′ N. lat. and the U.S./Mexico border unless otherwise stated). The prohibition on retention of petrale sole should have been stated within that table as applying south of 38° N. lat.

Without a correction to Federal regulations, this fishery would be closed between 38° N. lat. and 40°10′ N. lat., which is inconsistent with the intent of the Pacific Council and NMFS. Between 38° N. lat. and 40°10′ N. lat., the limited entry trawl RCA, which extends from the shoreline to 250–fm (457–m), as well as the reduced petrale sole trip limits for November and December, are expected to sufficiently reduce the take of petrale sole to near zero through the end of the year.

For these reasons, NMFS is amending Federal regulations to correctly prohibit the retention of petrale sole between 38° N. lat. and the U.S./Mexico border during the month of October in the trip limit table, Table 3 (South).

Classification

The Assistant Administrator (AA) for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be contrary to the public interest. The correction is to indicate that participants in the limited entry trawl fishery are prohibited from retaining petrale sole between 38° N. lat. and the U.S./Mexico border during the month of October in the trip limit table, Table 3 (South). NMFS had mis-published this closure in its inseason

adjustment for this action (70 FR 58066, October 5, 2005). Prior notice and opportunity for comment would contravene the intent of this action, which was to allow fishing for petrale sole between 40°10′ N. lat. and 38° N. lat. during October 2005. Providing prior notice and opportunity for comment would cost fishermen in lost fishing opportunity during October and to compound this loss by going through prior notice and opportunity for comment would in effect make the action meaningless. Therefore, it is contrary to the public interest to provide prior notice and an opportunity for public comment on this correction.

For these reasons, the AA finds also finds good cause to waive the 30-day delay in effectiveness requirement under 5 U.S.C. 553(d)(3).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 17, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ l. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In part 660, subpart G, Table 3 (South) is revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 092005

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:						
40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm			shoreline - 250 fm
38° - 36° N. lat.	75 fm - 150 fm	100 fm - 150 fm				shoreline - 200 fm
36° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				50 fm - 200 fm
South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands				50 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands

Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.
See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).

State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish[2/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	4,000 lb/ 2 months		8,000 lb/ 2 months	20,000 lb/ 2 months	8,000 lb/ 2 months	6,000 lb/ 2 months
3	South of 38° N. lat.	40,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	4,000 lb/ 2 months		8,000 lb/ 2 months	20,000 lb/ 2 months	8,000 lb/ 2 months	6,000 lb/ 2 months
6	South of 38° N. lat.	40,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	14,000 lb/ 2 months			16,000 lb/ 2 months		9,000 lb/ 2 months
9	Longspine thornyhead	19,000 lb / 2 months					11,000 lb/ 2 months
10	Shortspine thornyhead	4,200 lb/ 2 months			4,600 lb/ 2 months		3,500 lb/ 2 months
11	Dover sole	50,000 lb/ 2 months		40,000 lb/ 2 months			30,000 lb/ 2 months
12	**Flatfish** (except Dover sole)						
13	Other flatfish[3/] & English sole						
14	40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole. **South of 38° N. lat. during October, retention of petrale sole is prohibited.**				30,000 lb/ 2 months
15	South of 38° N. lat.						40,000 lb/ 2 months
16	Petrale sole	No limit					2,000 lb/ 2 months

TABLE 3 (South)

Table 3 (South). Continued

17	Arrowtooth flounder				
18	40°10' - 38° N. lat.	No limit	10,000 lb/ 2 months		10,000 lb/ 2 months
19	South of 38° N. lat.				5,000 lb/ 2 months
20	**Whiting**				
21	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED			
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip - After the primary whiting season: 10,000 lb/trip			
23	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**				
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
25	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
27	small footrope trawl	300 lb/ month			
28	**Bocaccio**				
29	large footrope or midwater trawl	300 lb/ 2 months			
30	small footrope trawl	CLOSED			
31	**Canary rockfish**				
32	large footrope or midwater trawl	CLOSED			
33	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
34	**Cowcod**	CLOSED			
35	**Minor nearshore rockfish & Black rockfish**				
36	large footrope or midwater trawl	CLOSED			
37	small footrope trawl	300 lb/ month			
38	**Lingcod[4/]**				
39	large footrope or midwater trawl	500 lb/ 2 months			
40	small footrope trawl	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
41	**Other Fish[5/] & Cabezon**	Not limited			

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 05–21088 Filed 10–18–05; 1:11 pm]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 101705A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the 2005 total allowable catch (TAC) of pollock specified for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 17, 2005, through 1200 hrs, A.l.t., October 19, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on October 8, 2005 (70 FR 59676, October 13, 2005).

NMFS has determined that approximately 1,700 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2005 TAC of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the directed fishing allowance for pollock in Statistical Area 630 of the GOA will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., October 19, 2005.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 13, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 17, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–20994 Filed 10–17–05; 1:14 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 202
Thursday, October 20, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–04–310]

RIN 0581–AC46

Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Service is reopened and extended. This action will allow interested persons additional time to prepare and submit comments.

DATES: Comments must be postmarked, courier dated, or sent via the internet on or before November 3, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments can be sent to: (1) Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Programs, Fresh Products Branch, 1400 Independence Ave., SW., Room 0640–S, Washington, DC 20250–0295, faxed to (202) 720–5136; (2) via e-mail to *FPB.DocketClerk@usda.gov.*; or (3) Internet: *http://www.regulations.gov*. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER CONTACT INFORMATION: Rita Bibbs-Booth, USDA, 1400 Independence Ave., SW., Room 0640–S, Washington, DC 20250–0295, or call (202) 720–0391.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on August 25, 2005 (70 FR 49882) requesting comments on the proposed Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services. Comments on the proposed rule were required to be received on or before September 26, 2005. A comment was received from an industry association, representing independent produce wholesale receivers, expressing the need for additional time to comment. The association requested the comment period be extended to allow the association an opportunity to meet with their members to discuss the impact of the proposed fee increase.

After reviewing the commenter's request, AMS is reopening and extending the comment period in order to allow sufficient time for interested persons, including the association, to prepare and submit comments

Dated: October 14, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–20961 Filed 10–19–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 05–16]

RIN 1557–AC95

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1238]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC96

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2005–40]

RIN 1550–AB98

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Domestic Capital Modifications

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint advance notice of proposed rulemaking (ANPR).

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, ''the Agencies'') are considering various revisions to the existing risk-based capital framework that would enhance its risk sensitivity. These changes would apply to banks, bank holding companies, and savings associations (''banking organizations''). The Agencies are soliciting comment on possible modifications to their risk-based capital standards that would facilitate the development of fuller and more comprehensive proposals

applicable to a range of activities and exposures.

This ANPR discusses various modifications that would increase the number of risk-weight categories, permit greater use of external ratings as an indicator of credit risk for externally-rated exposures, expand the types of guarantees and collateral that may be recognized, and modify the risk weights associated with residential mortgages. This ANPR also discusses approaches that would change the credit conversion factor for certain types of commitments, assign a risk-based capital charge to certain securitizations with early-amortization provisions, and assign a higher risk weight to loans that are 90 days or more past due or in nonaccrual status and to certain commercial real estate exposures. The Agencies are also considering modifying the risk weights on certain other retail and commercial exposures.

DATES: Comments on this joint advance notice of proposed rulemaking must be received by January 18, 2006.

ADDRESSES: Comments should be directed to:

OCC: You should include OCC and Docket Number 05–16 in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web Site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- E-mail address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*
- Docket: You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1238, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- E-mail: *comments@FDIC.gov.*
- Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Instructions: Submissions received must include the Agency name and title for this notice. Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

OTS: You may submit comments, identified by No. 2005–40, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: *regs.comments@ots.treas.gov.* Please include No. 2005–40 in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2005–40.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2005–40.

Instructions: All submissions received must include the Agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Nancy Hunt, Risk Expert, Capital Policy Division, (202) 874–4923, Laura Goldman, Counsel, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Thomas R. Boemio, Senior Project Manager, Policy, (202) 452–2982, Barbara Bouchard, Deputy Associate Director, (202) 452–3072, Jodie Goff, Senior Financial Analyst, (202) 452–2818, Division of Banking Supervision and Regulation, or Mark E. Van Der Weide, Senior Counsel, (202) 452–2263, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Bobby R. Bean, Senior Quantitative Risk Analyst, Capital Markets Branch, (202) 898–3575, Division of Supervision and Consumer Protection; or Michael B. Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Teresa Scott, Senior Project Manager, Supervision Policy (202) 906–6478, or Karen Osterloh, Special Counsel, Regulation and Legislation Division, Chief Counsel's Office, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In 1989 the Agencies implemented a risk-based capital framework for U.S. banking organizations [1] based on the ''International Convergence of Capital Measurement and Capital Standards'' (''Basel I'' or ''1988 Accord'') as published by the Basel Committee on Banking Supervision (''Basel Committee'').[2] Basel I addressed certain weaknesses in the various regulatory capital regimes that were in force in most of the world's major banking jurisdictions. The Basel I framework established a uniform regulatory capital system that was more sensitive to banking organizations' risk profiles than the regulatory capital to total assets ratio that was previously used in the United States, assessed regulatory capital against off-balance sheet items, minimized disincentives for banking organizations to hold low-risk assets, and encouraged institutions to strengthen their capital positions.

The Agencies' existing risk-based capital framework generally assigns each credit exposure to one of five broad categories of credit risk, which allows for only limited distinctions in credit risk for most exposures. The Agencies and the industry generally agree that the existing risk-based capital framework should be modified to better reflect the risks present in many banking organizations without imposing undue regulatory burden.

Since the implementation of the Basel I framework, the Agencies have made numerous revisions to their risk-based capital rules in response to changes in financial market practices and accounting standards. Over time, these revisions typically have increased the degree of risk sensitivity of the Agencies' risk-based capital rules. In recent years, however, the Agencies have limited modifications to the risk-based capital framework at the domestic level and focused on the international efforts to revise the Basel I framework. In June 2004, the Basel Committee introduced a new capital adequacy framework for large, internationally-active banking organizations, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (Basel II).[3] The Basel Committee's goal was to develop a more risk sensitive capital adequacy framework for internationally-active banking organizations that generally rely on sophisticated risk management and measurement systems. Basel II is designed to create incentives for these organizations to improve their risk measurement and management processes and to better align minimum capital requirements with the risks underlying activities conducted by these banking organizations.

In August 2003, the Agencies issued an Advance Notice of Proposed Rulemaking (''Basel II ANPR''), which explained how the Agencies might implement the Basel II approach in the United States.[4] As part of the Basel II implementation process, the Agencies have been working to develop a notice of proposed rulemaking (NPR) that provides the industry with a more definitive proposal for implementing Basel II in the United States (''Basel II NPR'').

The complexity and cost associated with implementing the Basel II framework effectively limit its application to those banking organizations that are able to take advantage of the economies of scale necessary to absorb these expenses. The implementation of Basel II would create a bifurcated regulatory capital framework in the United States, which may result in regulatory capital charges that differ for similar products offered by both large and small banking organizations.

In comments responding to the Basel II ANPR, Congressional testimony, and other industry communications, several banking organizations, trade associations, and others raised concerns about the competitive effects of a bifurcated regulatory framework on community and regional banking organizations. Among other broad concerns, these commenters asserted that implementing the Basel II capital regime in the United States would result in lower capital requirements for some banking organizations with respect to certain types of credit exposures. Community and regional banking organizations claimed that this would put them at a competitive disadvantage.

As part of the ongoing analysis of regulatory capital requirements, the Agencies believe that it is important to update their risk-based capital standards to enhance the risk-sensitivity of the capital charges, to reflect changes in accounting standards and financial markets, and to address competitive equity questions that, ultimately, may be raised by U.S. implementation of the Basel II framework. Accordingly, the Agencies are considering a number of revisions to their Basel I-based regulations.

To assist in quantifying the potential effects of Basel II, the Agencies conducted a quantitative impact study during late 2004 and early 2005 (QIS 4). QIS 4 was a comprehensive effort completed by 26 of the largest banking

[1] See 12 CFR part 3, appendix A (OCC); 12 CFR parts 208 and 225, appendix A (Board); 12 CFR part 325, appendix A (FDIC); and 12 CFR part 567 (OTS). The risk-based capital rules generally do not apply to bank holding companies with less than $150 million in assets. On September 8, 2005, the Board issued a proposal that generally would raise this exclusion amount to $500 million. (See 70 FR 53320.) The comment period will end on November 11, 2005.

[2] The Basel Committee on Banking Supervision was established in 1974 by central banks and authorities with bank supervisory responsibilities. Current member countries are Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

[3] The complete text for Basel II is available on the Bank for International Settlements Web site at *http://www.bis.org.*

[4] As stated in its preamble, the Basel II ANPR was based on a consultation document entitled ''The New Basel Capital Accord'' that was published by the Basel Committee on April 29, 2003 for public comment. The Basel II ANPR anticipated the issuance of a final revised accord. The ANPR identified the United States banking organizations that would be subject to this new capital regime (''Basel II banks'') as those: (1) with total banking assets in excess of $250 billion or on-balance sheet foreign exposures in excess of $10 billion, and (2) that choose to voluntarily apply Basel II. See 68 FR 45900 (Aug. 4, 2003). For credit risk, Basel II includes three approaches for regulatory capital: standardized, foundation internal ratings-based, and the advanced internal ratings-based. For operational risk, Basel II also includes three methodologies: basic indicator, standardized, and advanced measurement. The Basel II ANPR focused only on the advanced internal ratings-based and the advanced measurement approaches.

organizations using their own internal estimates of the key risk parameters driving the capital requirements under the Basel II framework. The preliminary results of QIS 4, which were released earlier this spring,[5] prompted concerns with respect to the (1) reduced levels of regulatory capital that would be required at individual banking organizations operating under the Basel II-based rules, and (2) dispersion of results among organizations and portfolio types. Because of these concerns, the issuance of a Basel II NPR was postponed while the Agencies undertook additional analytical work.[6]

The Agencies understand the desire of banking organizations to compare the proposed revisions to the existing Basel I-based capital regime with the Basel II proposal. However, the ability to definitively compare this ANPR with a Basel II NPR is limited due to the delay in the issuance of the Basel II NPR and to the number of options suggested in this ANPR. The Agencies intend to publish the pending Basel II NPR and an NPR addressing the Basel I-based rules in similar time frames, which will ultimately enable commenters to compare the proposals.

The existing risk-based capital requirements focus primarily on credit risk and generally do not impose explicit capital charges for operational or interest rate risk, which are covered implicitly by the framework. The risk-based capital charges suggested in this ANPR continue to implicitly cover aspects of these risks. Moreover, the Agencies are not proposing revisions to the existing leverage capital requirements (i.e., Tier 1 capital to total assets).[7]

II. Domestic Capital Framework Revisions

In considering revisions to their domestic risk-based capital rules the Agencies were guided by five broad principles. A revised framework must: (1) Promote safe and sound banking practices and a prudent level of regulatory capital, (2) maintain a balance between risk sensitivity and operational feasibility, (3) avoid undue regulatory burden, (4) create appropriate incentives for banking organizations, and (5) mitigate material distortions in the amount of regulatory risk-based capital requirements for large and small institutions. The changes under consideration are broadly consistent with the concepts used in developing Basel II, but are tailored to the structure and activities of banking organizations operating primarily in the United States.

In this ANPR, the Agencies are considering:

- Increasing the number of risk-weight categories to which credit exposures may be assigned;
- Expanding the use of external credit ratings as an indicator of credit risk for externally-rated exposures;
- Expanding the range of collateral and guarantors that may qualify an exposure for a lower risk weight;
- Using loan-to-value ratios, credit assessments, and other broad measures of credit risk for assigning risk weights to residential mortgages;
- Modifying the credit conversion factor for various commitments, including those with an original maturity of under one year;
- Requiring that certain loans 90 days or more past due or in a non-accrual status be assigned to a higher risk-weight category;
- Modifying the risk-based capital requirements for certain commercial real estate exposures;
- Increasing the risk sensitivity of capital requirements for other types of retail, multifamily, small business, and commercial exposures; and
- Assessing a risk-based capital charge to reflect the risks in securitizations backed by revolving retail exposures with early amortization provisions.

The Agencies welcome comments on all aspects of their risk-based capital framework that might require further review and possible modification, as well as suggestions for reducing the burden of these rules. The Agencies believe that a banking organization should be able to implement any changes outlined in this ANPR using data that are currently available as part of the organization's credit approval and portfolio management processes. As a result, this approach should minimize potential regulatory burden associated with any revisions to the existing risk-based capital rules. Commenters are particularly requested to address whether any of the proposed changes would require data that are not currently available as part of the organization's existing credit approval and portfolio management systems.

As required under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the Agencies are requesting comments on any outdated, unnecessary, or unduly burdensome requirements in their regulatory capital rules. The Agencies specifically request comment on the extent to which any of these capital rules may adversely affect competition and whether: (1) Statutory changes are necessary to eliminate specific burdensome requirements in these capital rules; (2) any of these capital rules contain requirements that are unnecessary to serve the purposes of the statute that they implement; (3) the compliance cost associated with reporting, recordkeeping, and disclosure requirements in these capital rules is justified; and (4) any of these capital rules are unclear.

A. Increase the Number of Risk-Weight Categories

The Agencies' risk-based capital framework currently has five risk-weight categories: zero, 20, 50, 100, and 200 percent. This limited number of risk-weight categories limits differentiation of credit quality among the individual exposures. Thus, the Agencies are considering alternatives that would better associate credit risk with an underlying exposure. One approach would be to increase the number of risk-weight categories to which on-balance sheet assets and credit equivalent amounts of off-balance sheet exposures may be assigned.

For illustrative purposes, this ANPR suggests adding four new risk-weight categories: 35, 75, 150, and 350 percent. Increasing the number of basic risk-weight categories from five to nine would permit banking organizations to redistribute exposures into additional categories of risk-weights. Like the changes in Basel II, the revisions suggested in this ANPR, such as increasing the number of risk-weight categories, should improve the risk sensitivity of the Agencies' regulatory capital rules. However, the increase in risk-weight categories is not expected to generate the same capital requirement for a given exposure as the pending Basel II proposal. The proposed categories would remain relatively broad measures of credit risk, which should minimize regulatory burden.

The Agencies seek comment on whether (1) increasing the number of risk-weight categories would allow supervisors to more closely align capital requirements with risk; (2) the additional risk-weight categories suggested above would be appropriate; (3) the risk-based capital framework

[5] See Testimony before the Subcommittee on Financial Institutions and Consumer Credit and the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Committee on Financial Services, United States House of Representatives, May 11, 2005. The testimony is available at *http://financialservices.house.gov/hearings.asp?formmode-detail&hearing-383.* The specific numbers from the QIS 4 survey are currently under review.

[6] See interagency press release dated April 29, 2005.

[7] See 12 CFR 3.6(b) and (c) (OCC); 12 CFR part 208, appendix B and 12 CFR part 225, appendix D (Board); 12 CFR 325.3 (FDIC); 12 CFR 567.8 (OTS).

should include more risk-weight categories than those proposed, such as a lower risk weight for the highest quality assets with very low historical default rates; and (4) an increased number of risk-weight categories would cause unnecessary burden on banking organizations.

B. Use of External Credit Ratings

In November 2001, the Agencies revised their risk-based capital standards to permit banking organizations to rely on external credit ratings that are publicly issued by Nationally Recognized Statistical Rating Organizations (NRSROs)[8] to assign risk weights to certain recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities.[9] For example, subject to the requirements of the rule, mortgage-backed securities with a long-term rating of AAA or AA[10] may be assigned to the 20 percent risk-weight category, and mortgage-backed securities with a long-term rating of BB may be assigned to the 200 percent risk-weight category. The rule did not apply this ratings-based approach to corporate debt and other types of exposures, even if they have an NRSRO rating.

To enhance the risk sensitivity of the risk-based capital framework, the Agencies are considering a broader use of NRSRO credit ratings to determine the risk-based capital charge for most NRSRO-rated exposures. If an exposure has multiple NRSRO ratings and these ratings differ, the credit exposure could be assigned to the risk weight applicable to the lowest NRSRO rating.

The Agencies currently are considering assigning risk weights to the rating categories in a manner similar to that presented in Tables 1 and 2.[11]

Table 1: Illustrative Risk Weights Based on External Ratings

Long-term rating category	Examples	Risk Weights
Highest two investment grade ratings	AAA/AA	20 percent
Third-highest investment grade rating	A	35 percent
Third-lowest investment grade rating	BBB+	50 percent
Second-lowest investment grade rating	BBB	75 percent
Lowest-investment grade rating	BBB-	100 percent
One category below investment grade	BB+, BB, BB-	200 percent
Two or more categories below investment grade	B and lower	350 percent

Table 2: Illustrative Risk Weights Based on Short-Term External Ratings

Short-term rating category	Examples	Risk Weights
Highest investment grade rating	A-1	20 percent
Second-highest investment grade rating	A-2	35 percent
Lowest investment grade rating	A-3	75 percent

While the Agencies are considering greater use of external ratings for determining capital requirements for a broad range of exposures, the Agencies are not planning to revise the risk weights for all rated exposures. For example, the Agencies are considering retaining the zero percent risk weight for short- and long-term U.S. government and agency exposures that are backed by the full faith and credit of the U.S. government and the 20 percent risk weight for U.S. government-sponsored entities.

The Agencies recognize that for certain exposures, the existing rules might serve as a better indicator of risk than the ratings-based approach as presented. The Recourse Final Rule introduced capital charges on sub-investment quality and unrated exposures that adequately reflect the risks associated with these exposures, which the Agencies intend to retain in their present form. Similarly, for exposures such as federal funds sold and other short-term inter-bank lending arrangements, the existing capital rules provide for a reasonable indicator of risk and thus would not be proposed to be changed. The Agencies also intend to retain the current treatment for municipal obligations. The Agencies

[8] A NRSRO is an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (SEC) as a nationally recognized statistical rating organization for various purposes, including the SEC's uniform net capital requirements for brokers and dealers.

[9] Final Rule to Amend the Regulatory Capital Treatment of Recourse Arrangements, Direct Credit Substitutes, Residual Interests in Asset Securitizations, and Asset-Backed and Mortgage-Backed Securities (Recourse Final Rule), 66 FR 59614 (November 29, 2001).

[10] The rating designations (e.g., ''AAA,'' ''BBB'', and ''A1'') used in this ANPR are illustrative only and do not indicate any preference for, or endorsement of, any particular rating agency designation system.

[11] As more fully discussed in Section C of this ANPR, the Agencies are also considering using these tables to risk weight an exposure that is collateralized by debt that has an external rating issued by a NRSRO or that is guaranteed by an entity whose senior long-term debt has an external credit rating assigned by an NRSRO.

recognize that other examples exist where the existing capital rules might serve as an appropriate indicator of risk, and request comment and suggestions on ways to accommodate these situations.

The Agencies would retain the ability to override the use of certain ratings or the ratings on certain exposures, either on a case-by-case basis or through broader supervisory policy, if necessary, to address the risk that a particular exposure poses. Furthermore, while banking organizations would be permitted to use external ratings to assign risk weights, this would not release an organization from its responsibility to comply with safety and soundness standards regarding prudent underwriting, account management, and collection policies and practices.

The Agencies solicit comment on (1) whether the risk-weight categories for NRSRO ratings are appropriately risk sensitive, (2) the amount of any additional burden that this approach might generate, especially for community banking organizations, in comparison with the benefit that such organizations would derive, (3) the use of other methodologies that might be reasonably employed to assign risk weights for rated exposures, and (4) methodologies that might be used to assign risk weights to unrated exposures.

C. Expand Recognized Financial Collateral and Guarantors

i. Recognized Financial Collateral

The Agencies' risk-based capital framework permits lower risk weights for exposures protected by certain types of eligible financial collateral. Generally, the only forms of collateral that the Agencies' existing rules recognize are cash on deposit at the banking organization; securities issued or guaranteed by central governments of the OECD countries, U.S. government agencies, and U.S. government-sponsored enterprises; and securities issued by multilateral lending institutions or regional development banks.[12] If an exposure is partially secured, the portion of the exposure that is covered by collateral generally may receive the risk weight associated with the collateral, and the portion of the exposure that is not covered by the collateral is assigned to the risk-weight category applicable to the obligor or the guarantor.

The banking industry has commented that the Agencies should recognize the risk mitigation provided by a broader array of collateral types for purposes of determining a banking organization's risk-based capital requirements. The Agencies believe that recognizing additional risk mitigation techniques would increase the risk sensitivity of their risk-based capital standards in a manner generally consistent with market practice and would provide greater incentives for better credit risk management practices.

The Agencies are considering expanding the list of recognized collateral to include short- or long-term debt securities (for example, corporate and asset- and mortgage-backed securities) that are externally-rated at least investment grade by an NRSRO, or issued or guaranteed by a sovereign central government that is externally-rated at least investment grade by an NRSRO. The NRSRO-rated debt securities would be assigned to the risk-weight category appropriate to the external credit rating as discussed in section II.B of this ANPR. For example, the portion of an exposure collateralized by a AAA- or AA-rated corporate security could be assigned to the 20 percent risk-weight category. Similarly, portions of exposures collateralized by financial collateral would be assigned to risk-weight categories based on the external rating of that collateral.

To use this expanded list of collateral, banking organizations would be required to have collateral management systems that can track collateral and readily determine the value of the collateral that the banking organization would be able to realize. The Agencies are seeking comments on whether this approach for expanding the scope of eligible collateral improves risk sensitivity without being overly burdensome.

ii. Eligible Guarantors

Under the Agencies' risk-based capital framework there is only limited recognition of guarantees provided by independent third parties. Specifically, the risk-based capital standards assign lower risk weights to exposures that are guaranteed by the central government of an OECD country, U.S. government agencies, U.S. government-sponsored enterprises, municipalities, public sector entities in OECD countries, multilateral lending institutions and regional development banks, depository institutions incorporated in OECD countries, qualifying securities firms, short-term exposures of depository institutions incorporated in non-OECD countries, and local currency exposures of central governments of non-OECD countries.

The Agencies seek comment on expanding the scope of recognized guarantors to include any entity whose long-term senior debt has been assigned an external credit rating of at least investment grade by an NRSRO. The applicable risk weight for the guaranteed exposure could be based on the risk weights in Tables 1 and 2. This approach would eliminate the distinction between OECD and non-OECD countries. The Agencies are also seeking comments on using a ratings-based approach for determining the risk weight applicable to a recognized guarantor and, more specifically, limiting the external rating for a recognized guarantor to investment grade or above.

D. One-to-Four Family Mortgages: First and Second Liens

Under the existing rules, most one-to-four family mortgages that are first liens are generally eligible for a 50 percent risk weight. Industry participants have, for some time, asserted that this 50 percent risk weight imposes an excessive risk-based capital requirement for many of these exposures. The Agencies observe that this ''one size fits all'' approach to risk-based capital may not assess suitable levels of capital for either low-or high-risk mortgage loans. Therefore, to align risk-based capital requirements more closely with risk, the Agencies are considering possible options for changing their risk-based capital requirements for first lien one-to-four family residential mortgages.

Several industry participants have suggested that capital requirements for first lien one-to-four family mortgages could be based on collateral through the use of the loan-to-value ratio (LTV). The following table illustrates one approach for using LTV ratios to determine risk-based capital requirements:

[12] The Agencies' rules, however, differ somewhat as is described in the Agencies' joint report to Congress. See ''Joint Report: Differences in Accounting and Capital Standards among the Federal Banking Agencies'', 57 FR 15379 (March 25, 2005). The Agencies intend to eliminate these differences in their respective risk-based capital regulations relating to collateralized exposures. This approach would result in consistent rules governing collateralized transactions in all material respects among the Agencies.

Table 3: Illustrative Risk Weights for First Lien One-to-Four Family Residential Mortgages (after consideration of PMI)

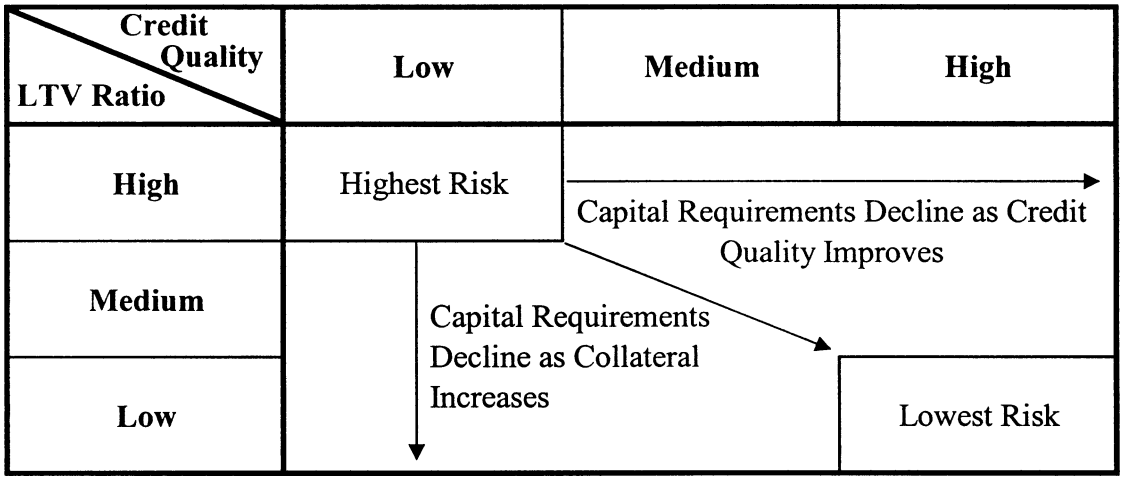
LTV Ratio	Risk Weight
91-100	100%
81-90	50%
61-80	35%
≤ 60	20%

Basing risk weights on LTVs in a manner similar to that illustrated above is intended to improve the risk sensitivity of the existing risk-based capital framework. The Agencies believe that the use of LTV ratios to measure risk sensitivity would not increase regulatory burden for banking organizations since this data is readily available and is often utilized in the loan approval process and in managing mortgage portfolios.

Banking organizations would determine the LTV of a mortgage loan after consideration of loan-level private mortgage insurance (PMI) provided by an insurer with an NRSRO-issued long-term debt rating of single A or higher. However, the Agencies currently do not recognize portfolio or pool-level PMI for purposes of determining the LTV of an individual mortgage. Furthermore, the Agencies note that reliance on even a highly-rated PMI insurance provider has some measure of counterparty credit risk and that PMI contract provisions vary, which provides banking organizations with a range of alternatives for mitigating credit risk. Arrangements that require a banking organization to absorb any amount of loss before the PMI provider would not be recognized under this approach. In addition, the Agencies are concerned that a blanket acceptance of PMI might overstate its ability to effectively mitigate risk especially on higher risk loans and novel products. Accordingly, to address concerns about PMI, the Agencies could place risk-weight floors on mortgages that are subject to PMI.

The Agencies seek comment on (1) the use of LTV to determine risk weights for first lien one-to-four family residential mortgages, (2) whether LTVs should be updated periodically, (3) whether loan-level or portfolio PMI should be used to reduce LTV ratios for the purposes of determining capital requirements, (4) alternative approaches that are sensitive to the counterparty credit risk associated with PMI, and (5) risk-weight floors for certain mortgages subject to PMI, especially higher-risk loans and novel products.

The Agencies are also considering alternative methods for assessing capital based on the evaluation of credit risk for borrowers of first lien one-to-four family mortgages. For example, credit assessments, such as credit scores, might be combined with LTV ratios to determine risk-based capital requirements. Under this scenario, different ranges of LTV ratios could be paired with specified ranges of credit assessments. Based on the resulting risk assessments, the Agencies could assign mortgage loans to specific risk-weight categories. Table 4 illustrates one approach for pairing LTV ratios with a borrower's credit assessment. As the table indicates, risk decreases as the LTV decreases and the borrower's credit assessment increases, which results in a decrease in capital requirements. Mortgages with low LTVs that are written to borrowers with higher creditworthiness might receive lower risk weights than reflected in Table 3; conversely, mortgages with high LTVs written to borrowers with lower creditworthiness might receive higher risk weights.



Another parameter that could be combined with LTV ratios to determine capital requirements might be a capacity measure such as a debt-to-income ratio. The Agencies seek comment on (1) the use of an assessment mechanism based

on LTV ratios in combination with credit assessments, debt-to-income ratios, or other relevant measures of credit quality, (2) the impact of the use of credit scores on the availability of credit or prices for lower income borrowers, and (3) whether LTVs and other measures of creditworthiness should be updated annually or quarterly and how these parameters might be updated to accurately reflect the changing risk of a mortgage loan as it matures and as property values and borrower's credit assessments fluctuate.

The Agencies are interested in any specific comments and available data on non-traditional mortgage products (e.g., interest-only mortgages). In particular, the Agencies are reviewing the recent rapid growth in mortgages that permit negative amortization, do not amortize at all, or have an LTV greater than 100 percent. The Agencies seek comment on whether these products should be treated in the same matrix as traditional mortgages or whether such products pose unique and perhaps greater risks that warrant a higher risk-based capital requirement.

If a banking organization holds both a first and a second lien, including a home equity line of credit (HELOC), and no other party holds an intervening lien, the Agencies' existing capital rules permit these loans to be combined to determine the LTV and the appropriate risk weight as if it were a first lien mortgage. The Agencies intend to continue to permit this approach for determining LTVs.

For stand-alone second lien mortgages and HELOCs, where the institution holds a second lien mortgage but does not hold the first lien mortgage and the LTV at origination (original LTV) for the combined loans does not exceed 90 percent, the Agencies are considering retaining the current 100 percent risk weight. For second liens, where the original LTV of the combined liens exceeds 90 percent, the Agencies believe that a risk weight higher than 100 percent would be appropriate in recognition of the credit risk associated with these exposures. The Agencies seek comment regarding this approach.

E. Multifamily Residential Mortgages

Under the Agencies' existing rules, multifamily (i.e., properties with more than four units) residential mortgages are generally risk-weighted at 100 percent. Certain seasoned multifamily residential loans may, however, qualify for a risk weight of 50 percent.[13] The Agencies seek comment and request any available data that might demonstrate that all multifamily loans or specific types of multifamily loans that meet certain criteria, for example, small size, history of performance, or low loan-to-value ratio, should be eligible for a lower risk weight than is currently permitted in the Agencies' rules.

F. Other Retail Exposures

Banking organizations also hold many other types of retail exposures, such as consumer loans, credit cards, and automobile loans. The Agencies are considering modifying the risk-based capital rules for these other retail exposures and are seeking information on alternatives for structuring a risk-sensitive approach based on well-known and relevant risk drivers as the basis for the capital requirement. One approach that would increase the credit risk sensitivity of the risk-based capital requirements for other retail exposures would be to use a credit assessment, such as the borrower's credit score or ability to service debt.

The Agencies request comment on any methods that would accomplish their goal of increasing risk sensitivity without creating undue burden, and, more specifically, on what risk drivers (for example, LTV, credit assessments, and/or collateral) and risk weights would be appropriate for these types of loans. The Agencies further request comment on the impact of the use of any recommended risk drivers on the availability of credit or prices for lower-income borrowers.

G. Short-Term Commitments

Under the Agencies' risk-based capital standards, short-term commitments (with the exception of short-term liquidity facilities providing liquidity support to asset-backed commercial paper (ABCP) programs)[14] are converted to an on-balance sheet credit equivalent amount using the zero percent credit conversion factor (CCF). As a result, banking organizations that extend short-term commitments do not hold any risk-based capital against the credit risk inherent in these exposures. By contrast, commitments with an original maturity of greater than one year are generally converted to an on-balance sheet credit equivalent amount using the 50 percent CCF.

The Agencies are considering amending their risk-based capital requirements for commitments with an original maturity of one year or less (i.e., short-term commitments). Even though commitments with an original maturity of one year or less expose banking organizations to a lower degree of credit risk than longer-term commitments, some credit risk exists. The Agencies are considering whether this credit risk should be reflected in the risk-based capital requirement. Thus, the Agencies are considering applying a 10 percent CCF on certain short-term commitments. The resulting credit equivalent amount would then be risk-weighted according to the underlying assets or the obligor, after considering any collateral, guarantees, or external credit ratings.

Commitments that are unconditionally cancelable at any time, in accordance with applicable law, by a banking organization without prior notice, or that effectively provide for automatic cancellation due to deterioration in a borrower's credit assessment would continue to be eligible for a zero percent CCF.[15]

The Agencies solicit comment on the approach for short-term commitments as discussed above. Further, the Agencies seek comment on an alternative approach that would apply a single CCF (for example, 20 percent) to all commitments, both short-term and long-term.

H. Loans 90 Days or More Past Due or in Nonaccrual

Under the existing risk-based capital rules, loans generally are risk-weighted at 100 percent unless the credit risk is mitigated by an acceptable guarantee or collateral. When exposures (for example, loans, leases, debt securities, and other assets) reach 90 days or more past due or are in nonaccrual status, there is a high probability that the financial institution will incur a loss. To address this potentially higher risk of loss, the Agencies are considering assigning exposures that are 90 days or more past due and those in nonaccrual status to a higher risk-weight category. However, the amount of the exposure to be assigned to the higher risk-weight category may be reduced by any reserves directly allocated to cover

[13] To qualify, these loans must meet requirements for amortization schedules, minimum maturity, LTV, and other requirements. See 12 CFR part 3, appendix A, § 3(a)(3)(v)(OCC); 12 CFR parts 208 and 225, appendix A, § III.C.3 (Board); 12 CFR part 325, appendix A, § II.C (category 3–50 percent risk weight) (FDIC); 12 CFR 567.1 (definition of qualifying multifamily mortgage loan) (OTS).

[14] Unused portions of short-term ABCP liquidity facilities are assigned a 10 percent credit conversion factor. See 69 FR 44908 (July 28, 2004).

[15] For example, the CCF for unconditionally cancelable commitments related to unused portions of retail credit card lines would remain at zero percent. 12 CFR part 3, appendix A, § 3(b)(4)(iii) (OCC); 12 CFR parts 208 and 225, appendix A, § III.D.5 (Board) 12 CFR part 325, appendix A, § II.D.5 (FDIC); 12 CFR 567.6(a)(2)(v)(C) (OTS).

potential losses on that exposure. The Agencies seek comments on all aspects of this potential change in treatment.

I. Commercial Real Estate (CRE) Exposures

The Agencies may revise the capital requirements for certain commercial real estate exposures such as acquisition, development and construction (ADC) loans based on longstanding supervisory concerns with many of these loans. The Agencies are considering assigning certain ADC loans to a higher than 100 percent risk weight. However, the Agencies recognize that a ''one size fits all'' approach to ADC lending might not be risk sensitive, and could discourage banking organizations from making ADC loans backed by substantial borrower equity. Therefore, the Agencies are considering exempting ADC loans from the higher risk weight if the ADC exposure meets the Interagency Real Estate Lending Standards regulations [16] and the project is supported by a substantial amount of borrower equity for the duration of the facility (e.g., 15 percent of the completion value in cash and liquid assets). Under this approach, ADC loans satisfying these standards would continue to be assigned to the 100 percent risk-weight category.

The Agencies seek recommendations on improvements to these standards that would result in prudent capital requirements for ADC loans while not creating undue burden for banking organizations making such loans. The Agencies also seek comments on alternative ways to make risk weights for commercial real estate loans more risk sensitive. To that end, they request comments on what types of risk drivers, like LTV ratios or credit assessments, could be used to differentiate among the credit qualities of commercial real estate loans, and how the risk drivers could be used to determine risk weights.

J. Small Business Loans

Under the Agencies' risk-based capital rules, a small business loan is generally assigned to the 100 percent risk-weight category unless the credit risk is mitigated by an acceptable guarantee or collateral. Banking institutions and other industry participants have criticized the lack of risk sensitivity in the risk-based capital charges for these exposures. To improve the risk sensitivity of their capital rules, the Agencies are considering a lower risk weight for certain business loans under $1 million on a consolidated basis to a single borrower.

Under one alternative, to be eligible for a lower risk weight, the small business loan would have to meet certain requirements: full amortization over a period of seven years or less, performance according to the contractual provisions of the loan agreement, and full protection by collateral. The banking organization would also have to originate the loan according to its underwriting policies (or purchase a loan that has been underwritten in a manner consistent with the banking organization's underwriting policies), which would have to include an acceptable assessment of the collateral and the borrower's financial condition and ability to repay the debt. The Agencies believe that under these circumstances the risk weight of a small business loan could be lowered to, for example, 75 percent. The Agencies seek comment on whether this relatively simple change would improve the risk sensitivity without unduly increasing complexity and burden.

Another alternative would be to assess risk-based capital based on a credit assessment of the business' principals and their ability to service the debt. This alternative could be applied in those cases where the business principals personally guarantee the loan.

The Agencies seek comment on any alternative approaches for improving risk sensitivity of the risk-based capital treatment for small business loans, including the use of credit assessments, LTVs, collateral, guarantees, or other methods for stratifying credit risk.

K. Early Amortization

Currently, there is no risk-based capital charge against risks associated with early amortization of securitizations of revolving credits (e.g., credit cards). When assets are securitized, the extent to which the selling or sponsoring entity transfers the risks associated with the assets depends on the structure of the securitization and the nature of the underlying assets. The early amortization provision in securitizations of revolving retail credit facilities increases the likelihood that investors will be repaid before being subject to any risk of significant credit losses.

Early amortization provisions raise several distinct concerns about the risks to seller banking organizations: (1) The subordination of the seller's interest in the securitized assets during early amortization to the payment allocation formula, (2) potential liquidity problems for selling organizations, and (3) incentives for the seller to provide implicit support to the securitization transaction—credit enhancement beyond any pre-existing contractual obligations—to prevent early amortization. The Agencies have proposed the imposition of a capital charge on securitizations of revolving credit exposures with early amortization provisions in prior rulemakings. On March 8, 2000, the Agencies published a proposed rule on recourse and direct credit substitutes (Proposed Recourse Rule).[17] In that proposal, the Agencies proposed to apply a fixed conversion factor of 20 percent to the amount of assets under management in all revolving securitizations that contained early amortization features in recognition of the risks associated with these structures.[18] The preamble to the Recourse Final Rule,[19] reiterated the concerns with early amortization, indicating that the risks associated with securitization, including those posed by an early amortization feature, are not fully captured in the Agencies' capital rules. While the Agencies did not impose an early amortization capital charge in the Recourse Final Rule, they indicated that they would undertake a comprehensive assessment of the risks imposed by early amortization.[20]

The Agencies acknowledge that early amortization events are infrequent. Nonetheless, an increasing number of securitizations have been forced to unwind and repay investors earlier than planned. Accordingly, the Agencies are considering assessing risk-based capital against securitizations of personal and business credit card accounts. The Agencies are also considering the appropriateness of applying an early amortization capital charge to securitizations of revolving credit exposures other than credit cards, and request comment on this issue.

One option would be to assess a flat conversion factor, (e.g., 10 percent)

[16] See 12 CFR part 34, subpart D (OCC); 12 CFR part 208, subpart E, appendix C (Board); 12 CFR part 365 (FDIC); 12 CFR 560.100–101 (OTS).

[17] 65 FR 12320 (March 8, 2000).

[18] Id. at 12330–31.

[19] 66 FR 59614, 59619 (November 29, 2001).

[20] In October 2003, the Agencies issued another proposed rule that included a risk-based capital charge for early amortization. See 68 FR 56568j, 56571–73 (October 1, 2003). This proposal was based upon the Basel Committee's third consultative paper issued April 2003. When the Agencies finalized other unrelated aspects of this proposed rule in July 2004, they did not implement the early amortization proposal. The Agencies determined that the change was inappropriate because the capital treatment of retail credit, including securitizations of revolving credit, was subject to change as the Basel framework proceeded through the United States rulemaking process. The Agencies, however, indicated that they would revisit the domestic implementation of this issue in the future. 69 FR 44908, 44912–13 (July 28, 2004).

against off-balance sheet receivables in securitizations with early amortization provisions. Another approach that would potentially be more risk-sensitive would be to assess capital against these types of securitizations based on key indicators of risk, such as excess spread levels. Virtually all securitizations of revolving retail credit facilities that include early amortization provisions rely on excess spread as an early amortization trigger. Early amortization generally commences once excess spread falls below zero for a given period of time.

Such a capital charge would be assessed against the off-balance sheet investors' interest and would be imposed only in the event that the excess spread has declined to a predetermined level. The capital requirement would assess increasing amounts of risk-based capital as the level of excess spread approaches the early amortization trigger (typically, a three-month average excess spread of zero). Therefore, as the probability of an early amortization event increases, the capital charge against the off-balance sheet portion of the securitization also would increase.

The Agencies are considering comparing the three-month average excess spread against the point at which the securitization trust would be required by the securitization documents to trap excess spread in a spread or reserve account as a basis for a capital charge. Where a transaction does not require excess spread to be trapped, the trapping point would be 4.5 percentage points. In order to determine the appropriate conversion factor, a bank would divide the level of excess spread by the spread trapping point.

Table 5: Example of Credit Conversion Factor Assignment by Segment

3-month average excess spread	Credit Conversion Factor (CCF)
133.33 percent of trapping point or more	0 percent
less than 133.33 percent to 100 percent of trapping point	5 percent
less than 100 percent to 75 percent of trapping point	15 percent
less than 75 percent to 50 percent of trapping point	50 percent
less than 50 percent of trapping point	100 percent

The Agencies seek comment on whether to adopt either alternative treatment of securitizations of revolving credit facilities containing early amortization mechanisms and whether either treatment satisfactorily addresses the potential risks such transactions pose to originators. The Agencies also seek comment on whether other early amortization triggers exist that might have to be factored into such an approach, e.g., level of delinquencies, and whether there are other approaches, treatments, or factors that the Agencies should consider.

III. Application of the Proposed Revisions

The Agencies are aware that some banking organizations may prefer to remain under the existing risk-based capital framework without revision. The Agencies are considering the possibility of permitting some banking organizations to elect to continue to use the existing risk-based capital framework, or portions thereof, for determining minimum risk-based capital requirements so long as that approach remains consistent with safety and soundness. The Agencies seek comment on whether there is an asset size threshold below which banking organizations should be allowed to apply the existing risk-based capital framework without revision.

The Agencies are also considering allowing banking organizations to choose among alternative approaches for some of the modifications to the existing capital rules that may be proposed. For example, a banking organization might be permitted to risk-weight all prudently underwritten mortgages at 50 percent if that organization chose to forgo the option of using potentially lower risk weights for its residential mortgages based on LTV or some other approach that may be proposed. The Agencies seek comment on the merits of this type of approach.

Finally, the Agencies note that, under Basel II, banking organizations are subject to a transitional capital floor (that is, a limit on the amount by which risk-based capital could decline). In the pending Basel II NPR, the Agencies expect to seek comment on how the capital floor should be defined and implemented. To the extent that revisions result from this ANPR process, the Agencies seek commenters' views on whether the revisions should be incorporated into the definition of the Basel II capital floor.

IV. Reporting Requirements

The Agencies believe that risk-based capital levels for most banks should be readily determined from data supplied in the quarterly Call and Thrift Financial Report filings. Accordingly, modifications to the Call and Thrift Financial Reports will be necessary to track the agreed-upon risk factors used in determining risk-based capital requirements. For example, banking organizations would be expected to segment residential mortgages into ranges based on the LTV ratio if that factor were used in determining a loan's capital charge. Externally-rated exposures could be segmented by the rating assigned by the NRSRO. Additionally, all organizations would need to provide more detail on guaranteed and collateralized exposures.

The Agencies seek comment on the various alternatives available to balance the need for enhanced reporting and greater transparency of the risk-based capital calculation, with the possible burdens associated with such an effort.

V. Regulatory Analysis

Federal agencies are required to consider the costs, benefits, or other effects of their regulations for various purposes described by statute or executive order. This section asks for comment and information to assist OCC and OTS in their analysis under Executive Order 12866.[21] Executive Order 12866 requires preparation of an analysis for agency actions that are ''significant regulatory actions.'' ''Significant regulatory actions'' include, among other things, regulations that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a

[21] E.O. 12866 applies to OCC and OTS, but not the Board or the FDIC.

sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. * * * ''[22] Regulatory actions that satisfy one or more of these criteria are called ''economically significant regulatory actions.''

If OCC or OTS determines that the rules implementing the domestic capital modifications comprise an ''economically significant regulatory action,'' then the agency making that determination would be required to prepare and submit to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) an economic analysis. The economic analysis must include:

- A description of the need for the rules and an explanation of how they will meet the need;
- An assessment of the benefits anticipated from the rules (for example, the promotion of the efficient functioning of the economy and private markets) together with, to the extent feasible, a quantification of those benefits;
- An assessment of the costs anticipated from the rules (for example, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness)), together with, to the extent feasible, a quantification of those costs; and
- An assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.[23]

For purposes of determining whether this rulemaking would constitute an ''economically significant regulatory action,'' as defined by E.O. 12866, and to assist any economic analysis that E.O. 12866 may require, OCC and OTS encourage commenters to provide information about:

- The direct and indirect costs of compliance with the revisions described in this ANPR;
- The effects of these revisions on regulatory capital requirements;
- The effects of these revisions on competition among banks; and
- The economic benefits of the revisions, such as the economic benefits of a potentially more efficient allocation of capital that might result from revisions to the current risk-based capital requirements.

OCC and OTS also encourage comment on any alternatives to the revisions described in this ANPR that the Agencies should consider. Specifically, commenters are encouraged to provide information addressing the direct and indirect costs of compliance with the alternative, the effects of the alternative on regulatory capital requirements, the effects of the alternative on competition, and the economic benefits from the alternative.

Quantitative information would be the most useful to the Agencies. However, commenters may also provide estimates of costs, benefits, or other effects, or any other information they believe would be useful to the Agencies in making the determination. In addition, commenters are asked to identify or estimate start-up, or non-recurring, costs separately from costs or effects they believe would be ongoing.

Dated: October 6, 2005.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 12, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 6th day of October, 2005.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 6, 2005.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 05–20858 Filed 10–19–05; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

[22] Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258, 67 FR 9385. For the complete text of the definition of ''significant regulatory action,'' see E.O. 12866 at § 3(f). A ''regulatory action'' is ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.'' E.O. 12866 at § 3(e).

[23] The components of the economic analysis are set forth in E.O. 12866 § 6(a)(3)(C)(i)–(iii). For a description of the methodology that OMB recommends for preparing an economic analysis, see Office of Management and Budget Circular A–4, ''Regulatory Analysis'' (September 17, 2003). This publication is available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22739; Directorate Identifier 2005–NM–098–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310–200 and A310–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain A300–600, A310–200, and A310–300 series airplanes. This proposed AD would require modifying the forward outflow valve of the pressure regulation subsystem. This proposed AD results from a report of accidents resulting in injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure, causing the doors to rapidly open. In these accidents, the buildup of residual pressure in the cabin was caused by the blockage of the outflow valve by an insulation blanket. We are proposing this AD to prevent an insulation blanket or other debris from being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to the inability to control cabin pressurization and adversely affect continued safe flight of the airplane.

DATES: We must receive comments on this proposed AD by November 21, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22739; Directorate Identifier 2005–NM–098–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain A300–600, A310–200, and A310–300 series airplanes. The DGAC advises that accidents resulting in injuries have occurred on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure (a positive pressure difference between inside the cabin and outside the cabin), causing the doors to rapidly open. In these accidents, the buildup of residual pressure in the cabin was caused by the blockage of the outflow valve by an insulation blanket, which prevented the valve from opening and closing during flight and on the ground to maintain control of cabin pressurization.

In addition, there have been several reports of operator difficulty maintaining cabin pressure during cruise. Investigation revealed that pieces of a cargo insulation blanket had been ingested into the forward outflow valve of the pressure regulation subsystem located at frame 39 of the fuselage.

These conditions, if not corrected, could lead to the inability to control cabin pressurization and adversely affect continued safe flight of the airplane.

Other Relevant Rulemaking

On June 29, 2004, we issued AD 2004–14–08, amendment 39–13717 (69 FR 41925, July 13, 2004), for certain Airbus Model A300–600 and A310 series airplanes. That AD requires modification of the attachment system of the insulation blankets of the forward cargo compartment and related corrective action. That AD was prompted by several reports of operator difficulty maintaining cabin pressure during cruise. Investigation revealed that pieces of a cargo insulation blanket had been ingested into the forward outflow valve of the pressure regulation subsystem located at frame 39 of the fuselage. We issued that AD to prevent failure of the attachment system of the cargo insulation blankets, which could result in detachment and consequent tearing of the blankets. Such tearing could result in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A300–63–6149 (for Model A300–600 series airplanes), and Service Bulletin A310–53–2121 (for Model A310–200 and A310–300 series airplanes), both dated February 25, 2005. The service bulletins describe procedures for modifying the forward outflow valve of the pressure regulation subsystem. The modification includes installing brackets and installing a fence (protective grating) in the area of frame 38.2. The DGAC mandated the service information and issued French airworthiness directive F–2005–061 R1, dated May 25, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Difference Between French Airworthiness Directive and This Proposed AD

The applicability of French airworthiness directive F–2005–061 R1, dated May 25, 2005, excludes airplanes on which either Airbus Service Bulletin A300–53–6149 or Airbus Service Bulletin A310–53–2121 has been accomplished. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in the service bulletins. This requirement would ensure that the actions specified in the service bulletins and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 169 airplanes of U.S. registry. The proposed modification would take

between 3 and 4 work hours per airplane, depending on airplane configuration, at an average labor rate of $65 per work hour. Required parts cost ranges between $120 and $420 per kit, (2 kits per airplane). Based on these figures, the estimated cost of the modification proposed by this AD for U.S. operators ranges between $73,515 and $185,900 or between $435 and $1,100 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–22739; Directorate Identifier 2005–NM–098–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Airbus airplanes identified in Table 1 of this AD, certificated in any category; except airplanes on which Airbus Modification 12921 has been done in production.

TABLE 1.—AIRBUS AIRPLANES AFFECTED BY THIS AD

Airbus model	As identified in Airbus service bulletin—	Dated—
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes	A300–53–6149	February 25, 2005.
A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes	A310–53–2121	February 25, 2005.

Unsafe Condition

(d) This AD results from a report of accidents resulting in injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure, causing the doors to rapidly open. In these accidents, the buildup of residual pressure in the cabin was caused by the blockage of the outflow valve by an insulation blanket. We are issuing this AD to prevent an insulation blanket or other debris from being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to the inability to control cabin pressurization and adversely affect continued safe flight of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 22 months after the effective date of this AD: Modify the forward outflow value of the pressure regulation subsystem by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–63–6149 (for Model A300–600 series airplanes) or A310–53–2121 (for Model A310–200 and A310–300 series airplanes), both dated February 25, 2005; as applicable.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) French airworthiness directive F–2005–061 R1, dated May 25, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on October 13, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20965 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–7985–7; E-Docket ID No. OAR–2005–0163]

RIN 2060–AN28

Prevention of Significant Deterioration, Nonattainment New Source Review, and New Source Performance Standards: Emissions Test for Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA (we) is proposing to revise the emissions test for existing electric generating units (EGUs) that are subject to the regulations governing the Prevention of Significant Deterioration (PSD) and nonattainment major New Source Review (NSR) programs (collectively ''NSR'') mandated by parts C and D of title I of the Clean Air Act (CAA or Act). The revised emissions test is the same as that in the New Source Performance Standards (NSPS) program under CAA section 111(a)(4). For existing EGUs, we are proposing to compare the maximum hourly emissions achievable at that unit during the past 5 years to the maximum hourly emissions achievable at that unit after the change to determine whether an emissions increase would occur. Alternatively, we are soliciting public comment on a major NSR emissions test for existing EGUs that would compare maximum hourly emissions achieved before a change to the maximum hourly emissions achieved after the change. We are also soliciting public comment on adopting an NSR emissions test based on mass of emissions per unit of energy output. In addition, we are soliciting comment on whether to revise the NSPS regulations to include a maximum achieved emissions test or an output-based emissions test, either in lieu of or in addition to the maximum achievable hourly emissions test. Today's proposal would not affect new EGUs, which would continue to be subject to major NSR preconstruction review and to the NSPS program. The proposed rule would only apply prospectively to changes at existing EGUs potentially covered by major NSR and the NSPS programs.

These proposed regulations interpret CAA section 111(a)(4), in the context of NSR and NSPS, for physical changes and changes in the method of operation at existing EGUs. The proposed regulations would establish a uniform emissions test nationally under the NSPS and NSR programs for existing EGUs. The proposed regulations would also promote the safety, reliability, and efficiency of EGUs.

DATES: *Comments.* Comments must be received on or before December 19, 2005.

Public Hearing. If anyone contacts us requesting to speak at a public hearing November 9, 2005, we will hold a public hearing approximately 30 days after publication in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2005–0163 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epamail.epa.gov.*
- Fax: 202–566–1741.
- Mail: Attention Docket ID No. OAR–2005–0163, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mail Code: 6102T, Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for OMB, 725 17th Street, Northwest, Washington, DC 20503.
- Hand Delivery: U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B102, Washington, DC 20004, Attention Docket ID No. OAR–2005–0163. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0163. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to section I..B. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B102, Washington, DC. Attention Docket ID No. OAR–2005–0163. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Janet McDonald, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–1450; fax number : (919) 541–5509, or electronic mail at *mcdonald.janet@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Regulated Entities?

Entities potentially affected by the subject rule for today's action are fossil-fuel fired boilers, turbines, and internal combustion engines, including those that serve generators producing electricity, generate steam or cogenerate electricity and steam.

Industry group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Federal government	22112[1]	Fossil-fuel fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	22112	Fossil-fuel fired electric utility steam generating units owned by municipalities. Fossil-fuel fired electric utility steam generating units in Indian country.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.
[1] Establishments owned and operated by Federal, State, or local government are classified according to the activity in which they are engaged.

Entities potentially affected by the subject rule for today's action also include State, local, and tribal governments.

B. How Should I Submit CBI to the Agency?

1. Submitting CBI. Do not submit this information that you consider to be CBI electronically through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark on the CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Also, send an additional copy clearly marked as above not only to the Air Docket but to: Mr. Roberto Morales, OAQPS Document Control Officer, (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2005–0163.

C. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

D. How Can I Find Information About a Possible Public Hearing?

People interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Chandra Kennedy, Integrated Implementation Group, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5319, at least 2 days in advance of the public hearing. People interested in attending the public hearing should also contact Ms. Kennedy to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed changes.

E. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

I. General Information
A. What Are the Regulated Entities?
B. How Should I Submit CBI Material to the Agency?
C. What Should I Consider as I Prepare My Comments?
D. How Can I Find Information About a Possible Public Hearing?
E. How Is This Preamble Organized?
II. Overview
III. Background on EGU Emissions and Requirements
A. SO_2 and NO_X Requirements Before 1990
B. SO_2 and NO_X Requirements After 1990
C. Requirements for Pollutants Other Than SO_2 and NO_X
IV. Today's Proposed Rule
A. Background on Existing Regulations
B. What We Are Proposing
1. Test for EGUs Based on Maximum Achievable Hourly Emissions
2. Test for EGUs Based on Maximum Achieved Hourly Emissions
3. Emissions Test Based on Energy Output
C. Pollutants to Which the Revised Applicability Test Applies
D. Significant Emissions Rates
E. Eliminating Netting
F. Benefits of Maximum Achievable Hourly Emissions Test
G. Would States Be Required To Adopt the Revised Emissions Test?
V. Statutory and Regulatory History and Legal Rationale
A. The NSPS Program
B. The Major NSR Program
C. Legal Rationale
1. Maximum Achievable Hourly Emissions Test
2. Maximum Achieved Hourly Emissions Test
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

II. Overview

In today's action, we are proposing to revise the emissions test for existing EGUs that are subject to the regulations in the major NSR programs mandated by parts C and D of title I of the CAA. The revised emissions test is the same as that in the NSPS under CAA section

111. For existing EGUs, we are proposing to compare the maximum hourly emissions achievable at that unit during the past 5 years to the maximum hourly emissions achievable at that unit after the change to determine whether an emissions increase would occur. This maximum achievable hourly emissions test would apply to emissions from existing EGUs. Today's proposal would not affect new EGUs, which would continue to be subject to major NSR preconstruction review. These proposed regulations interpret CAA section 111(a)(4), in the context of NSR, for physical changes and changes in the method of operation at existing EGUs.

Alternatively, we are soliciting public comment on a major NSR emissions test for existing EGUs that would compare maximum hourly emissions achieved before a change to the maximum hourly emissions achieved after the change. The test based on maximum achievable hourly emissions is our preferred test, but we are also soliciting comment on this test based on maximum achieved hourly emissions.

We also request comment on adopting an NSR emissions test based on mass of emissions per unit of energy output, such as lb/MW hour or nanograms per Joule. As we discuss in more detail in Section IV.B.3. of this preamble, an output-based emissions test encourages use of energy efficient EGU that displace less efficient, more polluting units.

We also request comment on extending the proposed emission increase tests to the NSPS program. Specifically, we are also soliciting comment on whether to revise 40 CFR 60.14 to include a maximum achieved emissions test or an output-based emissions test, either in lieu of or in addition to the maximum achievable hourly emissions test in the current regulations.

The proposed regulations would establish a uniform emissions test nationally under the NSPS and NSR programs for existing EGUs. The need to provide national consistency for EGUs is apparent following a recent Fourth Circuit Court of Appeals decision. On June 15, 2005, the Fourth Circuit Court of Appeals ruled that EPA must use a consistent definition of the term ''modification'' for the purposes of both the NSPS program under section 111 of the Act and NSR program under parts C and D of the Act. The Court further ruled that because EPA had promulgated NSPS regulations with a test based on increases in a plant's hourly rate of emissions prior to enactment of the PSD provision of the statute, and the PSD regulations had to be interpreted congruently to include the same hourly test.[2] See *United States* v. *Duke Energy Corp.,* No. 04–1763 (4th Cir. June 15, 2005). The Fourth Circuit denied the United States' petition for rehearing concerning this decision, although the deadline for filing a petition for certiorari has not yet run.[3] The NSPS program applies a maximum achievable hourly emissions rate test to determine whether a physical change or change in the operation (physical or operational change) results in an emissions increase. Once the mandate is issued in the *Duke Energy* case, the NSPS test will apply in all Fourth Circuit States, unless the NSR test in those States' implementation plans is more stringent than the NSPS test. This holding creates a potential disparity in the way we interpret the program in States in the Fourth Circuit compared to States in other Circuits in the country. By finalizing today's proposed rule, we would provide nationwide consistency in how States implement the major NSR program for EGUs and establish a test consistent with the Fourth Circuit's holding in *Duke Energy.* We would also make a uniform emissions test under the NSPS and NSR programs for existing EGUs.

We believe a uniform national emissions test has particular merit considering the substantial emissions reductions from other CAA requirements that are more efficient than major NSR, which we describe in Section III of this preamble. Furthermore, the proposed regulations allow owner/operators to make changes that, without increasing existing capacity, promote the safety, reliability, and efficiency of EGUs. The current major NSR approach discourages sources from replacing components, and encourages them to replace components with inferior components or to artificially constrain production in other ways. This behavior does not advance the central policy goals of the major NSR program as applied to existing sources. The central policy goal is not to limit productive capacity of major stationary sources, but rather to ensure that they will install state-of-the-art pollution controls at a juncture where it otherwise makes sense to do so. We also do not believe the outcomes produced by the approach we have been taking have significant environmental benefits compared with the approach we are proposing today.

In the following sections of this preamble, we provide details on the EGU requirements and emissions, today's proposed rule, and the legal basis for our proposal. We request public comment on all aspects of today's proposed action. We intend to publish a supplemental proposal in the near future that will include proposed regulatory language, as well as additional data and information.

III. Background on EGU Requirements and Emissions

In this section we describe the regulatory history and programs applying to EGUs. These include the command-and-control strategies such as NSPS and major NSR that went into effect before 1990, as well as the more efficient programs since 1990 that have achieved substantial reductions in EGU emissions.

A. SO_2 and NO_X Requirements Before 1990

Beginning in 1970, the CAA and our implementing regulations have imposed numerous requirements on sulfur dioxide (SO_2) and nitrous oxide (NO_X) emissions from utilities. In the early regulatory history under the CAA, these requirements were limited to the NSPS and major NSR programs. The NSPS program applies to EGUs and other stationary sources of pollutants, including SO_2, NO_X, particulate matter (PM), carbon monoxide (CO), ozone, and lead, among others. The Act required us to develop NSPS for a number of source categories, including coal-fired power plants. The first NSPS for EGUs (40 CFR part 60, subpart D) required new units to limit SO_2 emissions either by using scrubbers or by using low sulfur coal. It required limits on NO_X emissions through the use of low NO_X burners. A new NSPS (40 CFR part 60, subpart Da), promulgated in 1978, tightened the standards for SO_2, requiring scrubbers on all new units.

Federal preconstruction permitting for EGUs and other new stationary sources was considered in 1970, but not added to the CAA until it was amended again in 1977. The Federal preconstruction program for major stationary sources is commonly called the major NSR program. As we discuss in further detail in Section V.B. of this preamble, the major NSR program required emission limitations based on Best Available Control Technology (BACT) and Lowest

[2] The Court allowed for the possibility that EPA may change the test that applies through future rulemaking. See item 0015 in E-Docket OAR–2005–0163.

[3] We continue to respectfully disagree with the Fourth Circuit's decision in *Duke Energy* (item 0015 in E-Docket OAR–2005–0163) and continue to believe that we have the authority to define ''modification'' differently in the NSPS and NSR programs. However, we believe that the action that we proposed today is an appropriate exercise of our discretion.

Achievable Emission Rate (LAER) controls.

The NSPS and major NSR programs imposed limitations on EGU SO_2 and NO_X emissions at individual sources based on control technology performance. They did not set specific limits on the total regional or national emissions from EGUs. Neither of these programs apply to EGUs that were already in existence before the regulations were effective, unless these EGUs choose to modify. Thus, neither program applies to all EGUs. Before 1990, however, the major NSR program did provide States one of the few opportunities to mitigate rising levels of air pollution through regulation of possible emissions increases from existing sources. Therefore, the program was consistent with Congress' directive that the major NSR program be tailored to balance the ''need for environmental protection against the desires to encourage economic growth.''

B. SO_2 and NO_X Requirements After 1990

The 1990 Amendments to the CAA imposed a number of new requirements on EGUs. The Acid Rain program, established under title IV of the 1990 CAA Amendments, requires major reductions of SO_2 and NO_X emissions. The SO_2 program, which covers most EGU in the contiguous United States,[4] sets a permanent cap on the total amount of SO_2 that can be emitted by EGUs at about one-half of the amount of SO_2 these sources emitted in 1980. Using a market-based cap-and-trade mechanism such as the Acid Rain SO_2 program allows flexibility for individual combustion units to select their own methods of compliance. The program requires NO_X emission limitations for certain coal-fired EGUs, with the objective of achieving a 2 million ton reduction from projected NO_X emission levels that would have been emitted in the year 2000 without implementation of title IV.

The Acid Rain program at 40 CFR parts 72 through 78 comprises two phases for SO_2 and NO_X. Phase I applied primarily to the largest coal-fired electric generation sources from 1995 through 1999 for SO_2 and from 1996 through 1999 for NO_X. Phase II for both pollutants began in 2000. For SO_2, it applies to thousands of combustion units generating electricity nationwide; for NO_X it generally applies to affected units nationwide that burned coal during the period between 1990 and 1995. The Acid Rain program has led to the installation of scrubbers on a number of existing coal-fired units, as well as significant fuel switching to lower sulfur coals. Under the NO_X provisions of title IV, most existing coal-fired units were required to install low NO_X burners.

The 1990 CAA also placed much greater emphasis on interstate transport of ozone and its precursors, and on control of NO_X to reduce ozone nonattainment. This led to the formation of several regional NO_X trading programs. In 1998, EPA promulgated regulations, known as the NO_X SIP Call,[5] that required 21 states in the eastern United States and the District of Columbia to reduce NO_X emissions that contributed to nonattainment in downwind States. EPA based the reduction requirements on, and States implemented those requirements through a cap-and-trade approach targeted to EGUs. This program has resulted in the installation of significant amounts of selective catalytic reduction (SCR). The first SCR application in the U.S. on a coal-fired boiler started operating in 1993. At the end of 2002, 56 U.S. boilers were operating with SCR.

By notice dated May 12, 2005 [70 FR 25162], we promulgated the Clean Air Interstate Rule (CAIR) to reduce interstate transport of SO_2 and NO_X emissions. This rule established statewide emission reduction requirements for SO_2 and NO_X for States in the CAIR region. The emission reduction requirements are based on controls that are known to be highly cost effective for EGUs. This program was based on extensive experience in the Acid Rain and NO_X SIP Call cap-and-trade programs for major sources of SO_2 and NO_X.

In the CAIR, we took final action requiring 28 States and the District of Columbia to adopt and submit revisions to their State Implementation Plans (SIPs), under the requirements of CAA section 110(a)(2)(D), that would eliminate specified amounts of SO_2 and/or NO_X emissions. In developing the CAIR, we limited the requirements to those 28 States because we did not find that emissions from other States contribute significantly to downwind $PM_{2.5}$ or 8-hour ozone nonattainment.

Each State covered by CAIR may independently determine which emission sources to control, and which control measures to adopt. Our analysis indicates that emissions reductions from EGUs are highly cost effective, and we encourage States to base their CAIR SIP programs on emissions reductions from EGUs. States that do so may allow their EGUs to participate in an EPA-administered cap-and-trade program as a way to reduce the cost of compliance, and to provide compliance flexibility. The EPA-administered cap-and-trade program includes fossil-fuel fired boilers, combustion turbines, and certain cogeneration units with nameplate capacity of more than 25 MWe producing or supplying electricity for sale as defined in 40 CFR 96.104 and 96.204.[6] Some of these units have never been subject to major NSR because they commenced construction before the effective date of the major NSR regulations, and they have never undertaken modifications. CAIR Units must hold annual allowances. Each allowance authorizes the emission of one ton of NO_X for a specified calendar year. For SO_2 allowances with vintage in the years before 2010, each allowance authorizes the emission of one ton of SO_2 for a calendar year. For 2010 and beyond, each allowance authorizes the emission of less than one ton of SO_2 per year.[7] The CAIR emissions reductions will be implemented in two phases, one beginning in 2009 (2010 for SO_2) and a second beginning in 2015. CAIR Units are subject to stringent monitoring, recordkeeping, and reporting requirements. Owner/operators must monitor and report CAIR Unit emissions using CEMS or other monitoring methodologies that are as precise, reliable, accurate, and timely according to the requirements in 40 CFR part 75. Source information management, emissions data reporting, and allowance trading occur through EPA-administered

[4] The Acid Rain program generally applies to all fossil-fuel fired combustion devices that, if commencing commercial operation before November 15, 1990, serve on or after November 15, 1990 a generator greater than 25 MW producing electricity for sale and that, if commencing commercial operation on or after November 15, 1990, serve on or after November 15, 1990 any generator producing electricity for sale. The Acid Rain program does not apply to a small portion of the national EGU inventory, including some cogeneration units (many of which are natural-gas fired), certain independent power producers, and solid waste incineration units.

[5] See 63 FR 57356, October 27, 1998 (Item 002 in E–Docket OAR–2005–0163).

[6] The proposed test would not apply to all cogeneration units. It would apply only to those EGU that §§ 96.104, 96.204, and 96.304 identify. On August 24, 2005 [70 FR 49708; see item 0029 in E-Docket OAR–2005–0163], we proposed changes to §§ 96.104 and 96.204 to exclude units (serving a greater-than-25 MW generator) that stopped operating before November 15, 1990 and do not resume. In this notice, we also proposed changes to the definition of ''EGU'' to exclude certain solid waste incineration units.

[7] For allowances of vintage years 2010–2014, each allowance authorized the emission of half a ton of SO_2 for a calendar year. For allowances of vintage years 2015 and beyond, each allowance authorizes the emission of 0.35 tons of SO_2 for a calendar year. See item 0019 in E–Docket OAR–2005–0163–70 FR 25258, May 12, 2005. See also 40 CFR 96.202.

online systems. Any source found to have excess emissions must surrender allowances sufficient to offset excess emissions and surrender future allowances equal to three times the excess emissions.[8]

The CAIR will result in significant reductions in SO_2 and NO_X emissions across the region that it covers. CAIR, if implemented through controls on EGUs, would result in EGU emissions reductions in the CAIR States of roughly 73 percent for SO_2 and 61 percent for NO_X from 2003 levels. The rule would affect roughly 3,000 fossil-fuel-fired units. As Table 1 shows, these sources accounted for roughly 89 percent of nationwide SO_2 emissions and 79 percent of nationwide NO_X emissions from EGUs in 2003.[9]

TABLE 1.—EGU SO_2 AND NO_X EMISSIONS IN 2003 AND PERCENTAGE OF EMISSIONS IN THE CAIR AFFECTED REGION (TONS)

	SO_2	NO_X
CAIR region	9,407,406	3,222,636
Nationwide	10,595,069	4,165,026
CAIR emissions as % nationwide	89%	79%

Note: Region includes States covered for the annual SO_2 and NO_X trading programs (Alabama, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin).

We estimate that the CAIR will reduce SO_2 emissions by 3.5 million tons[10] in 2010 and by 3.8 million tons in 2015. We also estimate that it will reduce annual NO_X emissions by 1.2 million tons in 2009 and by 1.5 million tons in 2015. (These numbers are for the 23 States and the District of Columbia that are affected by the annual SO_2 and NO_X requirements of CAIR. There are 28 States affected by CAIR, but only 23 States affected by the CAIR annual SO_2 and NO_X requirements. That is, five States are only affected by the CAIR seasonal NO_X trading program requirements.) If all the affected States choose to achieve these reductions through EGU controls, then EGU SO_2 emissions in the affected States would be capped at 3.6 million tons in 2010 and 2.5 million tons in 2015,[11] and EGU annual NO_X emissions would be capped at 1.5 million tons in 2009 and 1.3 million tons in 2015.

The CAIR will also improve air quality in all areas of the eastern U.S. We estimate that the required SO_2 and NO_X emissions reductions will, by themselves, bring into attainment 52 of the 79 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2010, and 57 of the 74 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2015. We further estimate that the required NO_X emissions reductions will, by themselves, bring into attainment three of the 40 counties that are otherwise projected to be in nonattainment for 8-hour ozone in 2010, and six of the 22 counties that are otherwise projected to be in nonattainment for 8-hour ozone in 2015.[12] In addition, the CAIR will improve $PM_{2.5}$ and 8-hour ozone air quality in the areas that would remain nonattainment for those two NAAQS after implementation of the rule. The CAIR will also reduce $PM_{2.5}$ and 8-hour ozone levels in attainment areas.

To determine the statewide emission caps under the CAIR, we assumed the application of highly cost-effective control measures to EGUs and determined the emissions reductions that would result. Specifically, we modeled emissions reductions using the Integrated Planning Model (IPM) with wet and dry desulfurization (FGD, commonly known as scrubbers) technologies for SO_2 control and SCR technology for NO_X control on coal-fired boilers.[13] These are fully demonstrated and available pollution control technologies. The design and performance levels for these technologies were based on proven industry experience.

We expect many EGUs to install scrubbers and SCR to meet the emissions reductions required under the CAIR. As a result of the CAIR, we project installation of scrubbers on an additional 64 GW of existing coal-fired generation capacity for SO_2 control and SCR on an additional 34 GW of existing coal-fired generation capacity for NO_X control by 2015. By 2020, we expect installation of scrubbers on an additional 82 GW of existing coal-fired generation capacity for SO_2 control and SCR on an additional 33 GW of existing coal-fired generation capacity for NO_X control.[14]

In the western half of the U.S. and other States where CAIR will not apply, the Best Available Retrofit Technology (BART) requirements of the regional haze rule will also apply to EGUs that may not be subject to major NSR. The regional haze rule requires all States to take steps in their implementation plans to improve visibility in Class I areas. [64 FR 35714 (July 1, 1999); 70 FR 39104 (July 6, 2005)] Under the Regional Haze program, States are to address all types of manmade emissions contributing to visibility impairment in Class I areas, including those from mobile sources, stationary sources (such as EGUs), area sources such as residential wood combustion and gas stations, and prescribed fires. CAA sections 169(b)(2)(A) and (g)(7) specifically require installation of BART for emissions of visibility-impairing pollutants (for example, SO_2 and NO_X) from certain existing stationary sources, including large EGUs. The CAA defines

[8] For a complete description of requirements for CAIR Units under the EPA-administered trading program, see item 0019 in E-Docket OAR–2005–0163–70 FR 25162.

[9] See our Regulatory Impact Analysis for the CAIR at 6–9. The RIA is available at *http://www.epa.gov/air/interstateairquality/pdfs/finaltech08.pdf.* See item 0022 in E-Docket OAR–2005–0163.

[10] These data are from EPA's most recent Integrated Planning Model (IPM) modeling reflecting the final CAIR as promulgated at 70 FR 25162. Please see the final CAIR rule at 70 FR 25162. (*See* item 0019 in E-Docket OAR–2005–0163) for a complete description of the assumptions related to these data.

[11] The banking provisions of the cap-and-trade program encourage sources to make significant reductions before 2010. Such early reductions are beneficial because they encourage greater health benefit sooner. However, due to the use of banked allowances, EPA does not project that these caps will be met in 2010 and 2015.

[12] See item 0019 in E-Docket OAR–2005–0163—70 FR 25162.

[13] U.S. EPA, Regulatory Impact Analysis for the CAIR at p. 7–5. See item 0022 in E-Docket OAR–2005–0163. Available at *http://www.epa.gov/air/interstateairquality/pdfs/finaltech08.pdf.* For more information about the highly cost effective controls for EGUs that were used to establish the emissions reductions under the CAIR, see also 69 FR 4612 (item 0003 in E-Docket OAR–2005–0163).

[14] See CAIR RIA at 7–8 and 7–9 (item 0022 in E-Docket OAR–2005–0163). The CAIR RIA is also available at *http://www.epa.gov/air/interstateairquality/technical.html.* In 1999, total electric generating capacity was 781 GW, of which utilities accounted for approximately 85 percent. U.S. EPA NSR 90-Day Review Background Paper, p. 12. See item 0039 in E-Docket OAR–2005–0163.

a BART-eligible source as a stationary source of air pollutants that falls within one of 26 listed categories and that was put into operation between August 7, 1962 and August 7, 1977, with the potential to emit 250 tons per year of any visibility-impairing pollutant. [CAA section 169(b)(2)(A) and (g)(7); 40 CFR 51.301.]

We issued guidelines for implementing BART requirements,[15] including presumptive BART control levels for emissions of SO_2 and NO_X from utility boilers located at power plants over 750 MW. Those presumptive BART control levels are based on cost effective controls. As explained in the guidelines, as a general matter States must require owners and operators of greater than 750 MW power plants to meet these BART emission limits. In addition, while States are not required to follow these guidelines for EGUs located at power plants with a generating capacity of less than 750 MW, based on our analysis, we believe that States will find these same presumptive controls to be highly cost effective, and to result in a significant degree of visibility improvement, for most EGUs greater than 200 MW, regardless of the size of the plant at which they are located.

Regional haze is the result of air pollutants emitted by numerous sources over a wide geographic region. As a result, EPA has encouraged States to work together in developing and implementing their air quality plans addressing regional haze. In fact, the States have been working together in regional planning organizations to develop regional plans. Moreover, we have proposed a process by which States may use an emissions trading program in place of facility-by-facility BART requirements. In these aspects, the requirements for BART are similar to those under the CAIR. We expect that both the CAIR and the BART requirements will reduce regional SO_2 and NO_X emissions from EGUs in a cost-effective manner.

We developed three scenarios to project the nationwide EGU SO_2 and NO_X emissions reductions under BART. Under the medium stringency scenario (Scenario 2), we estimate that BART controls will result in annual NO_X reductions of 585,459 tons, about a 9.6 percent reduction; and in annual SO_2 reductions of 390,224 tons, about a 2.3 percent reduction, over the 2015 base case.[16] Under Scenario 2, BART is projected to result in the installation of scrubbers on an additional 6.2 GW of existing coal-fired generation capacity for SO_2 control in 2015 (relative to expected reductions from CAIR alone). For NO_X control, this BART scenario is also projected to result in installation of combustion control equipment on an additional 24 GW of coal-fired generation capacity by 2015, as well as installation of SCR on an additional 2.4 GW on coal-fired generation capacity by 2015.

We have conducted analyses based on emission projections and air quality modeling showing that CAIR (as we expect States to implement it) will achieve greater reasonable progress towards the national visibility goal than would BART for affected EGUs. In our final BART rule (70 FR 39104), we thus promulgated regional haze rule revisions allowing States to treat CAIR as an in-lieu-of BART program for SO_2 and NO_X emissions from EGUs in CAIR-affected States, where those States participate in the EPA-administered cap and trade program. The criteria for making ''better than BART'' determinations have now been codified in the regional haze rule at 40 CFR 51.308(e)(3). We thus expect EGUs in CAIR-affected States to be subject to SIPs implementing CAIR SO_2 and NO_X requirements rather than to BART.

We are aware that there are some EGUs that would not be subject to the Acid Rain program or BART, would not be included in the CAIR program due to their geographic location, and that also would not be subject to major NSR unless they choose to modify.[17] First, there is a set of EGUs that are not in CAIR affected States, and that are BART-eligible but may not be subject to BART. Assuming Scenario 2, there would be approximately 28 coal-fired EGUs that are BART-eligible, not in the CAIR region, and have a capacity less than 200 MW. Smaller units such as these generally are not base load units. The total capacity for these 28 units is approximately 4 GW, less than one half of a percent of current national capacity. Of these 28 units, approximately 3 GW have NO_X controls and approximately 2 GW have SO_2 controls. There are approximately 47 oil or gas-fired EGUs that are BART-eligible, not in the CAIR region, and have a capacity less than 200 MW. The total capacity for these 47 units is approximately 5 GW, also less than one half of a percent of national capacity. Of these 47 units, approximately 1 GW have NO_X controls. Of these 47 units, 41 are gas-fired. Gas-fired EGU are clean burning and generally emit very small amounts of SO_2. The main control strategy for SO_2 emissions from oil-fired units is using lower-sulfur fuel.

The second set of EGUs that may not be subject to any control requirements are those in the non-CAIR States that are not subject to major NSR and are not BART-eligible. Some EGUs that are located in non-CAIR States and that began operation on or before August 7, 1962 would not be BART-eligible. These units would neither be subject to BART nor included in regulations implementing the CAIR program. They would also not be subject to major NSR unless they choose to modify. Some may be subject to the Acid Rain program. Our database[18] shows that there is a total of about 2 GW of coal capacity (less than one half of a percent of national capacity) outside the CAIR region that was constructed or began operations before 1962. This capacity represents about 25 units at about 13 plants, ranging in capacity from 38–135 MW. Smaller, older units such as these generally are not base load units. We estimate that these units have a potential to emit SO_2 and NO_X that is high enough that they would have been subject to major NSR if they had been constructed later. Of these 25 units, four have NO_X controls and six have SO_2 controls. The 13 plants are geographically dispersed.

Thus, as we explain above, there are a small number of EGUs that may not be required to control emissions under any program, but they comprise a very small portion of the national capacity and will have a minimal impact on emissions.[19] As we note in Table 1,

[15] See **Federal Register** 70 FR 39104 (July 6, 2005) at item 0017 in E-Docket OAR–2005–0163.

[16] That is, these are the reductions that are estimated to occur under Scenario 2 in addition to the reductions that are estimated to occur under CAIR. See BART RIA at 3–6—item 0004 in E-Docket OAR–2005–0163. Regulatory Impact Analysis for the Final Clean Air Visibility Rule or the Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations. EPA–452/R–05–004. U.S. Environmental Protection Agency, June 2005. Also, available at: *http://www.epa.gov/oar/visibility/actions.html.*

[17] Major stationary sources of regulated NSR pollutants that commenced construction on or after August 7, 1977 are subject to requirements under major NSR, including meeting emissions limitations based on BACT or LAER. To be BART-eligible, an EGU must have commenced operation between August 7, 1962 and August 7, 1977. Thus, due to their construction date, BART-eligible EGUs are not subject to major NSR unless they modify.

[18] Information received from Mikhail Adamantiades, U.S. EPA, Clear Air Markets Division on October 4, 2005—item 0051 in E-Docket OAR–2005–0163.

[19] We expect all State agencies to include EGUs in their regulations implementing the CAIR rule. We therefore believe that in CAIR-affected States, regulations implementing the CAIR will apply to all EGU. However, there is a possibility that a State agency would decide not to include EGU in their SIP regulations implementing the CAIR. We believe this possibility to be remote.

approximately 90 percent of nationwide EGU SO_2 emissions and approximately 80 percent of nationwide EGU NO_X emissions are from EGU in the CAIR affected region. Furthermore, we note that EGUs, including EGUs outside the CAIR region, are subject to national caps on SO_2 emissions through the Acid Rain program requirements. We therefore believe that any EGUs that might remain uncontrolled would have a negligible impact on national emissions of regulated NSR pollutants.

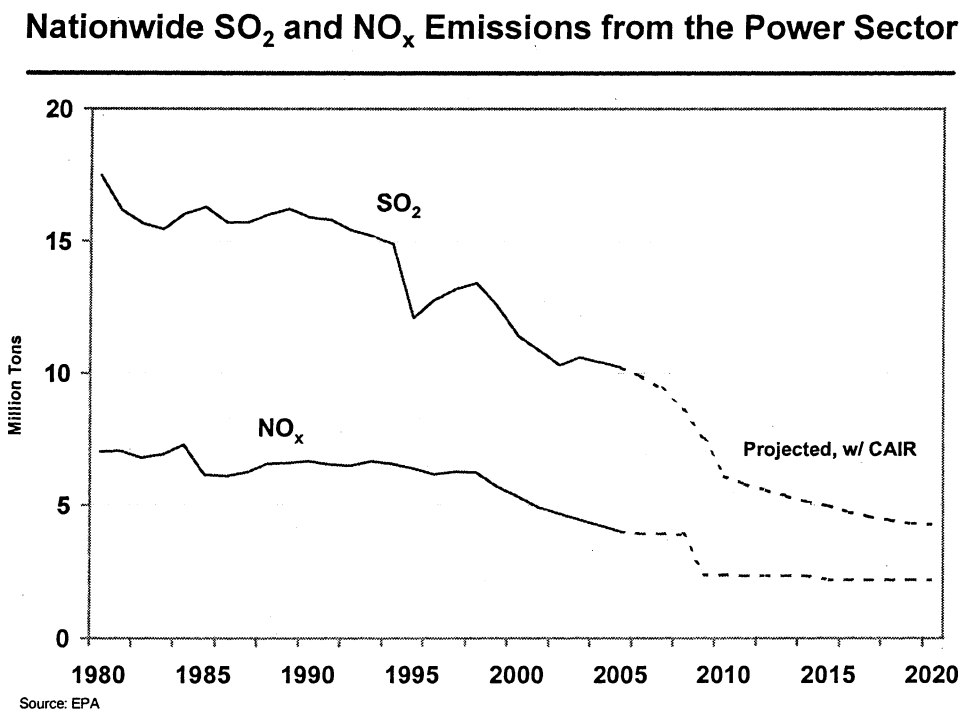
Finally, as Table 2 below shows, substantial reductions in SO_2 and NO_X emissions are projected to occur following the imposition of these market-based strategies after 1990.

TABLE 2.—REDUCTION IN EGU NATIONAL ANNUAL EMISSIONS [20]

[In thousands of tons per year]

	1990	2015	Emission reduction	Percent reduction
SO_2 (Annual)	15,700	4,770	10,930	70
NO_X (Annual)	6,700	1,916	4,784	71

The figure below shows the national reductions in EGU SO_2 and NO_X emissions that have occurred to date, and that we expect to occur, due to these programs.



In addition, we expect further reductions from implement ation of BART.

These reductions in national emissions for the utility sector are especially significant considering that national capacity continues to increase. In 1990, national nameplate capacity for EGUs was 692,935 MW, in 2002 it was 758,756 MW, and in 2015 we anticipate it to be 776,377 MW.[21]

In summary, since the 1990 CAA Amendments, additional requirements for EGUs have applied under the Acid Rain program and the NO_X SIP Call, and we expect significant additional reductions as States implement the CAIR. These regional and national programs apply or will apply to EGUs, regardless of when the EGUs were constructed or began operating. More importantly, these national or regional trading programs set permanent caps on SO_2 and NO_X emissions. Notably, the CAIR will permanently cap SO_2 and NO_X emissions in the CAIR region, which covers approximately 80 percent of national electric generating capacity. We expect all of the SO_2 and NO_X reductions under CAIR to come from EGUs. Despite growth in the utility and other sectors, these programs have substantially reduced SO_2 and NO_X emissions and even more substantial reductions will occur as a result of the CAIR. The BART program will further reduce national EGU SO_2 and NO_X emissions.

[20] Modeled 1990 baseline emissions from John Robbins. Reductions based on 2015 projected emissions for EGUs greater than 25 MW, assuming BART Scenario 2 (medium stringency scenario). These projected reductions assume control requirements implemented under CAIR, the Acid Rain program, BART (Scenario 2), and State rules. Under BART Scenario, our IPM modeling assumes control of all EGU at least 200 MW, regardless of the size of the plant at which the EGU is located. See BART RIA at 7–7—item 0004 in E-Docket OAR–2005–0163.

[21] Data from EPA Office of Air and Radiation, Clean Air Markets Division. See item 0012 in E-Docket OAR–2005–0163.

The Acid Rain, NO_X SIP Call and CAIR programs will require substantial reductions in SO_2 and NO_X emissions over the next decade. At the same time, they provide substantial flexibility to EGUs in responding to these regulatory requirements, allowing EGUs to make cost effective control decisions. As a result, they serve a function similar to that under major NSR of balancing environmental goals and encouraging economic growth.

As we discuss in more detail in Section V.B. of this preamble, the primary purpose of the major NSR program is not to reduce emissions, but to balance the need for environmental protection and economic growth. That is, the goal of major NSR is to minimize emissions increases from new source growth. The major NSR approach we have been taking leads to outcomes that have not advanced the central policy of the major NSR program as applied to existing sources. This is because the program is not designed to cut back on emissions from existing major stationary sources through limitations on their productive capacity, but rather to ensure that they will install state-of-the-art pollution controls at a juncture where it otherwise makes sense to do so. We also do not believe the outcomes produced by the approach we have been taking have significant environmental benefits compared with the approach we are proposing today. We do not believe that today's revised emissions test is substantially different from the actual-to-projected-actual test. This is particularly true in light of the substantial EGU emissions reductions that other programs have achieved or are expected to achieve. We therefore believe that, to any extent today's revised emissions test would lead to more growth in emissions than the actual-to-projected-actual test would, the emissions increases from that growth would be substantially less than the emissions reductions we expect from the Acid Rain, NO_X SIP Call, CAIR, and BART programs.[22]

C. Requirements for Pollutants Other Than SO_2 and NO_X

Concerning PM and lead, the application of the major NSR program to EGU emissions increases would be unlikely to result in the implementation of any additional controls. Current BACT and LAER limits to control PM (both PM_{10} and $PM_{2.5}$) for EGUs are achieved through the application of baghouses or electrostatic precipitators (ESPs) to individual boilers. Of the 450 coal-fired plants, the following controls are in place to reduce PM emissions from EGU: 79 plants have bag houses (fabric filters), 354 plants have ESPs, and 21 plants have both ESPs and baghouses.[23] Therefore, virtually all coal-fired EGUs are already well-controlled for PM. The minimal lead emissions from EGUs are in particulate form, and are captured by PM controls.

For CO and VOC, the only BACT/LAER requirements that exist for boilers are ''good combustion'' practices. EGUs operate under enormous economic incentives not to waste fuel, and good combustion practices conserve fuel. Thus, EGUs have strong incentives to use good combustion practices, regardless of the major NSR regulations. We believe that virtually all EGUs are already implementing such practices to control CO and VOC. Accordingly, we do not believe that VOC or CO emissions increases at EGU are likely or that the application of the major NSR program to changes made at the EGUs would be likely to result in the implementation of additional controls for CO and VOC. Furthermore, even if EGU did not have built-in incentives to control VOC and CO emissions, we do not believe that today's revised emissions test would result in emissions increases compared to the actual-to-projected-actual test. Therefore, we expect no air quality impacts due to CO or VOC emissions as a result of this proposed rule.

IV. Today's Proposed Rule

Today, we are proposing to allow existing EGUs to use the same maximum achievable hourly emissions test we apply under NSPS to determine whether a physical change in or change in the method of operation (physical or operation change) results in an emissions increase under the major NSR program. We request public comments on all aspects of the proposed changes.

This section also provides a brief background on the emissions increase test used in the NSPS and major NSR programs, and summarizes our proposed changes to the NSR program, which is necessary to understand the proposed regulations. For a fuller discussion on the statutory and legislative background of the major NSR program, please see Section V.B. of today's preamble.

A. Background on Existing Regulations

Both the NSPS and major NSR programs impose requirements on modifications of stationary sources. Our NSPS regulations contain a two-part definition of modification. The first part substantially mirrors the statutory text found in section 111(a)(4) of the Act, while the second elaborates upon the first. In simplistic terms, the Act establishes a two-step test for determining whether an activity is a modification. First you must determine whether the activity qualifies as a physical change or operational change of a stationary source, then you must determine whether that activity also increases the amount of pollution emitted by the stationary source.

You can find the regulatory text defining ''modification'' within the NSPS general provision regulations at 40 CFR sections 60.2 and 60.14. Substantially mirroring CAA 111(a)(4), § 60.2 contains a general description of the two components an activity must satisfy to qualify as a modification. Section 60.14 elaborates on the general description contained in § 60.2 by more precisely defining how you measure the amount of pollution that results from an activity, and listing activities that do not qualify as physical or operational changes.[24]

Unlike our NSPS regulations, our major NSR regulations do not contain a specific definition of the term ''modification.'' Instead, our regulations define ''major modification,'' which adds provisions for determining whether an activity satisfies the second component (whether there is an increase in the amount of an air pollutant). Specifically, the major modification definition provides a two-step procedure for measuring emissions increases. Under this process, a source looks at whether a project will result in a significant emissions increase on an annual basis and then whether contemporaneous increases and decreases will result in a significant net emissions increase (netting) on an annual basis.

The differences between the definition of ''modification'' as applied in the NSPS program and ''major modification'' as applied in the major NSR program illustrate some fundamental differences in the way we have implemented the programs to date.

[22] In our projections of emissions changes under the Acid Rain program, the NO_X SIP Call, the CAIR, and BART, increases in future electric generating capacity are accounted for.

[23] See information received from Kevin Culligan, U.S. EPA Clean Air Markets Division, item 0044 in E-Docket OAR–2005–0163.

[24] We described the relationship between the provisions contained in sections 60.2 and 60.14 in a 1974 **Federal Register** notice in which we stated that the regulations concerning modifications in § 60.14 clarify the phrase ''increases the amount of any air pollutant'' that appears in the definition of modification in § 60.2. 39 FR 36946, October 15, 1974—see item 0014 in E-Docket OAR–2005–0163.

First, the NSPS program regulates all emissions increases (that is, it regulates any increase in the hourly emissions), while the major NSR program exempts emissions increases that are less than significant (that is, it exempts emissions increases that are less than 40 tpy). Second, the NSPS program regulates modifications of ''affected facilities,'' which are typically small collections of equipment within a larger manufacturing plant. The major NSR program regulates modifications of major stationary sources. Accordingly, all the equipment within a larger manufacturing plant is looked at collectively. Finally, because the NSPS regulates small collections of equipment rather than the entire plant, increases in one part of the plant cannot be ''offset'' with decreases at other parts of the plant. [See *Asarco, Inc.* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978).] Conversely, major NSR regulates changes in emissions at the major stationary source as a whole and allows decreases in emissions from one part of the plant to ''offset'' increases in emissions that occur in another part of the plant. [See *Alabama Power* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979).] This process is known as ''netting.''

The NSPS modification provisions apply an hourly emission rate test to measure emissions increases resulting from a physical or operational change. Specifically, under the regulations, whether there is an emissions increase is determined by comparing the pre-change baseline hourly emission rate to the post-change hourly emission rate. For electric utility steam generating units (EUSGUs), the baseline hourly rate is ''the maximum hourly emissions achievable at that unit during the 5 years prior to the change.'' [See 40 CFR 60.14(h).] EPA has described this rate as the rate, in the past 5 years, that the source could achieve at its physical and operational capacity (57 FR 32330). Thus, this hourly rate represents the highest rate at which the source could actually emit during the relevant period.

The baseline hourly emissions rate for non-EGUs is likewise based on current maximum capacity, which is defined as the production rate at which the source could operate without making a capital expenditure. [See § 60.14(e)(2).] As provided in § 60.14 (b)(1), we measure the emissions rate in kg/hr or lbs/hr. Therefore, the baseline hourly emissions for non-utilities is also based on the highest rate at which the source could actually emit. As we stated at 57 FR 32316 referring to the rules for non-utilities, ''under current NSPS regulations, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. That is, to determine whether a change to an existing facility will increase the emissions rate, the existing NSPS regulations authorize the use of an ''emissions factor analysis'', or materials balance, continuous monitoring, or manual emissions test to evaluate emissions before and after the change.''

This characterization of the emissions rate as based on the highest rate at which the source could actually emit is consistent with our previous statements and regulations. In the preamble to the December 23, 1971 NSPS rules, we stated that ''procedures have been modified so that the equipment will have to be operated at maximum expected production rate, rather than rated capacity, during compliance tests.'' (See 36 FR 24876.) The December 1971 rules specified that a change in the method of operation did not include ''an increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility.'' (See 36 FR 24877.) On October 15, 1974, we proposed to change this provision to ''an increase in the production rate of an existing facility, if that increase can be accomplished without a major capital expenditure'' and to move it to § 60.14(e)(2).[25] [*See* 39 FR 36946.] In describing the reason for this change, we specifically stated that hourly emissions must be determined considering what the source could actually emit, rather than ''design'' (nameplate) capacity.

> The exemption of increases in production rate is no longer dependent upon the ''operating design capacity.'' This term is not easily defined and for certain industries the ''design capacity'' bears little relationship to the actual operating capacity of the facility.

Id. at 39 FR 36948.

As Congress indicated in the legislative history for the 1977 CAA,[26] design capacity is equivalent to potential to emit. In the NSPS regulations, neither the EGU nor the non-EGU hourly emissions are based on design capacity. Thus, to describe the NSPS test as a potential-to-potential test is inaccurate, and EPA has not asserted that the NSPS test is a potential-to-potential test. Instead, the Agency has at times referred to ''hourly potential emissions.'' Where we have referred to hourly potential emissions, we have also been clear that we are referring to what the source is actually able to emit at current maximum capacity. For example, in the 1988 WEPCO memorandum, we stated:

> Pursuant to longstanding EPA interpretations, the emission rate before and after a physical or operational change is evaluated at each unit by comparing the hourly potential emissions under current maximum capacity to emissions at maximum capacity after the change.'' [27]

Our current major NSR regulations measure an emissions increase at an existing emissions unit using the ''actual-to-projected-actual'' applicability test. Under this approach, we compare an emissions unit's ''baseline actual emissions'' to the emission unit's projected actual emissions after the change. Our current test distinguishes how non-EUSGUs compute an emissions unit's baseline actual emissions from the method used for EUSGUs. We define baseline actual emissions for non-EUSGUs as the average annual emission rate calculated from any consecutive 24-month period in the past 10 years. For EUSGUs, the baseline actual emissions equals the average annual emission rate achieved over any consecutive 24-month period in the past 5 years unless there is another period of time that is more representative of normal source

[25] These changes were adopted on December 16, 1975 (see 40 FR 58416) and the provisions have remained unchanged, except to clarify that they apply to the facility rather than to the stationary source containing that facility.

[26] The legislative history is clear that Congress considered ''potential to emit'' and ''design capacity'' to be equivalent terms. The House bill defined a major stationary source as any stationary source of air pollutant which directly emits or has the design capacity to emit 100 tons annually of any pollutant for which an ambient air quality standard is promulgated. [H.R. Report 95–564, p. 172 (1977), U.S. Code Cong. & Admin.News 1977, p. 1552.] The House bill also stated that ''major emitting facilities proposing to construct facilities must receive State permits. All sources with the design capacity to emit 100 tons per year or more of any pollutant must receive a permit.'' [H.R. Report 95–564, p. 149 (1977), U.S. Code Cong. & Admin.News 1977, p. 1529.] The Senate amendment defined major emitting facility as any stationary source with an annual potential to emit 100 tons or more of any pollutant. The Senate bill also required permits for major stationary sources with potential to emit over 250 tons per year. The conference committee agreed on the provisions on major emitting facilities and major stationary sources to be included in the statute at 302(j) and 169(1) as follows.

> The State plan must require permits for: (a) All 28 categories listed in the Senate bill if the sources has the potential (design capacity) to emit over 100 tons per year; and (b) any other source with the design capacity to emit more than 250 tons per year of any air pollutant. [H.R. Report 95–564, p. 149 (1977), U.S. Code Cong. & Admin.News 1977, p. 1153].

[27] Memorandum dated September 9, 1988, from Don R. Clay, Acting Assistant Administrator for Air & Radiation, U.S. EPA, to David A. Kee, Director, Air and Radiation Division, U.S. EPA Region V. *Applicability of PSD and NSPS Requirements to the WEPCO Port Washington Life Extension Project.* Available at: *http://www.epa.gov/region7/programs/artd/air/nsr/nsrmemos/wpco2.pdf.* Page 9 and item 0005 in E-Docket OAR–2005–0163.

operations. We use the same definition of projected actual emissions for both EUSGUs and non-EUSGUs. The rules generally define projected actual emissions as the maximum annual rate of emissions at which the emissions unit is projected to operate for the first 5 years after the emissions unit begins operation following the change. See 40 CFR 51.166 (b)(47) and (b)(40) to understand all aspects of the baseline actual emissions and projected actual emissions definitions.

B. What We Are Proposing

1. Test for EGUs Based on Maximum Achievable Hourly Emissions

Today, we are proposing to allow existing EGUs to use the same maximum achievable hourly emissions test applied in the NSPS to determine whether a physical or operation change results in an emissions increase under the major NSR program. Accordingly, the major NSR regulations would apply at an EGU if a physical or operational change results in any increase in the maximum hourly emissions rate. We are not proposing to allow EGUs to exclude emissions increases that fall below a particular significant emissions rate, or to allow EGUs to use plantwide netting to avoid NSR applicability.

We are proposing to define EGUs in the same way that this term is defined by the CAIR and Acid Rain regulations. Specifically, we would define EGU as fossil-fuel fired boilers and turbines serving an electric generator with a nameplate capacity greater than 25 megawatts (MW) producing electricity for sale.[28] Fossil fuel is described as natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material. The term ''fossil fuel-fired'' with regard to an emissions unit means combusting fossil fuel, alone or in combination with any amount of other fuel or material.

This definition of EGU is broader than the definition of EUSGU currently found in the NSPS and NSR regulations. The EGU definition includes cogeneration facilities and simple cycle gas turbines that would not qualify under EUSGU definitions. That is, the revised emissions test would apply to EUSGUs, cogeneration facilities, and simple cycle gas turbines.

To incorporate the NSPS maximum achievable hourly emissions test into the major NSR regulations, we are proposing to add a definition of modification to the major NSR regulation that will apply to changes affecting regulated NSR pollutant emissions in lieu of the current definition of major modification. We would add the new definition to all versions of the NSR regulations including 40 CFR 51.165, 51.166, 52.21, 52.24, and in Appendix S of 40 CFR part 51, as well as any regulations we finalize to implement major NSR in Indian Country.[29]

We propose that this definition would substantially mirror, but would not be identical to, the definition of modification contained in section 60.14 of the NSPS regulations. There are differences between the two programs that prevent a wholesale adoption of the NSPS modification definition into the major NSR provisions. For example, the NSPS program applies the definition of modifications only to stationary sources and pollutants for which a particular NSPS standard applies. Specifically, the NSPS program regulates modifications of ''affected facilities,'' which are typically small collections of equipment within a larger manufacturing plant. The NSPS program also specifies which pollutants from the affected facility are regulated. For example, Subpart Da of 40 CFR part 60 regulates emissions increases of sulfur dioxides, nitrogen oxides, and particulate matter from EUSGUs. The major NSR program, on the other hand, regulates modifications of major stationary sources. Accordingly, all the equipment within a larger manufacturing plant is looked at collectively. Furthermore, the Act mandates that major NSR requirements apply to modifications at any major stationary source that increases emissions of any regulated NSR pollutant.[30] The proposed definition is as follows.

''Modification,'' for an electric generation unit (EGU), means any physical change in, or change in the method of operation of, an EGU which increases the amount of any regulated NSR pollutant emitted into the atmosphere by that source or which results in the emission of any regulated NSR pollutant(s) into the atmosphere that the source did not previously emit. An increase in the amount of regulated NSR pollutants must be determined according to the provisions in paragraph (x) of this section.

We disagree with the Fourth Circuit's holding in *Duke Energy*, and thus believe we are able to make reasonable distinctions between the NSPS and NSR programs where appropriate. Although the Fourth Circuit held in *Duke Energy* that we must use the same definition of modification in both the NSPS and NSR programs where appropriate, it only discussed this finding in the context of the component term of the definition ''increases in the amount of any air pollutant emitted.'' In fact, the Court noted that the Fourth Circuit had previously held that the term ''stationary source,'' a component term within the definition of ''modification,'' could be interpreted differently in the NSPS and PSD programs because Congress had not defined the term in both programs. [*Duke Energy*, slip op. at 17, citing *Potomac Elec. Power Co.* v. *EPA*, 650 F.2d 509, 518 (4th Cir. 1981).[31] Accordingly, we believe it is reasonable to interpret the *Duke Energy* decision as requiring, within the Fourth Circuit, that the maximum hourly emissions test be used within the major NSR provisions, but as not requiring the identical treatment of the term ''physical change in or change in the method of operation.'' Based on our interpretation, we propose to incorporate the part of the major modification definition that addresses regulation of physical and operational changes into the modification definition for EGUs. We request comment on this interpretation.

We also are not proposing to change our current methodologies for computing the amount or availability of emissions offsets, or for computing emissions for purposes of conducting an ambient impact analysis. Accordingly, EGUs will be required to follow the existing regulations related to these provisions.

In proposing this NSR test for EGUs based on maximum achievable hourly emissions, we are aware of the recent opinion by the United States Court of Appeals for the District of Columbia Circuit in *New York* v. *EPA*, 413 F.3d 3 (D.C. Cir. June 24, 2005). In that case, the Court rejected challenges to substantial portions of EPA's 2002 NSR rules. However, the Court did hold that EPA lacked authority to promulgate the ''Clean Unit'' provision of the 2002 rules, and in doing so, held that ''the plain language of the CAA indicates that

[28] On August 25, 2005, we proposed regulatory language to clarify that the definition of EGU in CAIR does not include municipal waste combustors or solid waste incinerators, and to clarify that the definition only covers entities that have at any time since November 15, 1990 served an electric generator with a nameplate capacity greater than 25 megawatts (MW) producing electricity for sale. See 70 FR 49708, item 0029 in E-Docket OAR–2005–0163.

[29] In the near future, we plan to publish a proposed rule addressing NSR requirements in tribal lands.

[30] The major NSR regulations define NSR regulated pollutants at 40 CFR 51.166(b)(49).

[31] The *Duke Energy* Court also noted that in *Northern Plains Res. Council* v. *EPA*, 645 F.2d 1349, 1356 (9th Cir. 1981) [see item 0046 in E-Docket OAR–2005–0163], the Ninth Circuit allowed EPA to interpret the statutory term ''commenced'' differently in the NSPS and PSD regulations. *Duke Energy*, slip op. at 17.

Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions.'' *Id.*, slip op. at 40.

We respectfully disagree with the Court's holding that the plain language of the CAA requires that NSR apply to changes in actual emissions, and the United States has filed a petition for rehearing and rehearing *en banc* as to this holding. We believe that the CAA is silent on whether increases in emissions for purposes of determining whether a physical or operational change constitutes a modification must be measured in terms of actual emissions, potential emissions, or some other currency. Therefore, we believe that even if the test for emissions increases that we propose today were based on something other than actual emissions, it would be an appropriate interpretation and entitled to deference under step 2 of the analytical process set forth in *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837 (1984). Nonetheless, we recognize that we must promulgate a rule that is consistent with the D.C. Circuit's resolution of this issue.

Regardless of whether our petition for rehearing in *New York* v. *EPA* is denied, we believe that a test based on maximum achievable hourly emissions is a test based on actual emissions. The maximum achievable hourly emissions test measures what a source has been actually able to emit based on physical and operating capacity during a representative period prior to the change. For most, if not all EGUs, the hourly rate at which the unit is actually able to emit is substantively equivalent to that unit's historical maximum hourly emissions. States require most, if not all EGUs, to perform periodic performance tests under applicable SIPs and enhanced monitoring requirements. The NSPS regulations require a source to conduct testing based on representative performance of the affected facility, generally interpreted as performance at current maximum physical and operational capacity. [40 CFR 60.8(c).] [32] Also, in the National Stack Test Guidance that we issued on September 30, 2005, we recommended that facilities conduct performance tests under conditions that are ''most likely to challenge the emissions control measures of the facility with regard to meeting the applicable emission standards, but without creating an unsafe condition.'' [33] Most EGUs actually emit at the highest level at which they are capable of emitting at some time within a 5-year baseline period.

We solicit comment on our assumption that an NSR test for EGUs based on maximum achievable hourly emissions is, in fact, a test that would be based on a measure of actual emissions in light of the manner in which EGUs are operated.

As we noted earlier, the current major NSR regulations contain a definition of major modification. Specifically, the major modification definition provides a two-step procedure for measuring emissions increases. Under this process, a source looks at whether a project will result in a significant emissions increase on an annual basis and then whether contemporaneous increases and decreases will result in a significant net emissions increase (netting) on an annual basis. We are proposing to replace this definition of major modification with a definition of modification based on the maximum hourly achievable emissions increase test (or one of the two other emissions increase tests that we discuss in the following sections, maximum achieved emissions or an output-based measure of emissions). However, we request comment on whether we should instead add the definition of modification based on an hourly emissions test, which would then be followed by the current major modification provisions based on annual emissions. Specifically, we request comment on whether the major NSR program should include a four-step process as follows: (1) Physical change or change in the method of operation; (2) maximum achievable hourly emissions increase (or another alternative emissions increase test such as discussed below); (3) significant emissions increase as in the current major NSR regulations; (4) significant net emissions increase as in the current major NSR regulations.

2. Test for EGUs Based on Maximum Achieved Hourly Emissions

We are also proposing in the alternative a slightly different emissions test from the maximum achievable hourly emissions test applied in the NSPS program. Specifically, we are requesting comment on whether we should promulgate an emissions test based on assessing an emissions unit's historical maximum hourly emissions. That is, instead of calculating what a source could actually emit at current maximum capacity, actual emissions would be determined by a specific measure of historical emissions, such as with CEMS. This test may be preferred by some because the method of assessing the source's actual emissions is similar to the current major NSR approach for determining baseline actual emissions.

We would call this test the maximum achieved hourly emissions test. Under this approach, an EGU would determine whether an emissions increase will occur by comparing the pre-change maximum actual hourly emission rate to a projection of the post-change maximum actual hourly emission rate. The pre-change maximum actual hourly emission rate would be the highest rate at which the EGU actually emitted the pollutant within the 5-year period immediately before the physical or operational change.

Like the maximum achievable hourly emissions test, the maximum achieved emissions test is a measure of a source's actual emissions. The maximum achieved hourly emissions test is based on a specific measure of historical actual emissions during a representative period. Therefore, even if our petition for rehearing in *New York* v. *EPA* is denied, we believe that a test based on maximum achieved hourly emissions satisfies the requirement that major NSR applicability be based on ''some measure of actual emissions.''

We request comment on whether adopting this alternative approach would achieve all of the policy objectives supporting this proposal as effectively as the maximum achievable hourly emissions test would. We stated that two of our goals for this proposal are to streamline the regulatory requirements applying to EGUs by allowing EGUs to apply the same test for measuring emissions increases from modifications under both the NSPS program and NSR program, and to provide some nationwide consistency in the emissions calculation procedures in light of the Fourth Circuit's decision in *Duke*. We believe that the maximum achievable hourly emissions test could better comport with our policy goals than the maximum achieved hourly emissions test. Therefore, given that we do not believe that there is substantive difference in the baseline emissions between the two tests, we prefer adoption of the maximum achievable hourly emissions test as used in the NSPS program.

[32] See also 36 FR 24876, December 23, 1971. Referring to performance tests, we stated that ''Procedures have been modified so that the equipment will have to be operated at maximum expected production rate, rather than rated capacity, during compliance tests.

[33] See the EPA memorandum, *Issuance of Final Clean Air Act National Stack Testing Guidance,* from Michael M. Stahl, Director, Office of Compliance, to Regional Compliance/Enforcement Division Directors, September 30, 2005, p. 14. Available at *http://www.epa.gov/Compliance/resources/policies/monitoring/caa/stacktesting.pdf* and item 0007 in E–Docket OAR–2005–0163.

In view of our policy goal to establish a uniform emissions test nationally under the NSPS and NSR programs for existing EGUs, we also request comment on extending the maximum achieved hourly emissions test to emissions increases in the NSPS program. Specifically, we request comment on whether we should revise 40 CFR 60.14 to include a maximum achieved hourly emissions test, either in lieu of the maximum achievable hourly emissions test or in addition to the maximum achievable hourly emissions test. We intend to provide more detailed information concerning the maximum achieved hourly emissions test in the NSPS program in our supplemental proposal.

3. Emissions Test Based on Energy Output

We also request comment on adopting an NSR emissions test based on mass of emissions per unit of energy output, such as lb/MW hour or nanograms per Joule. Applicability under the major NSR program has historically been based on annual limits measured in tons per year. As we discuss in Section V. of this preamble, Congress did not specify how to calculate ''increases'' in emissions and left EPA with the task of filling that gap. We believe establishing an NSR emissions increase test based on mass emissions per unit of energy output would be a reasonable use of our discretion.

We also believe that incorporating an output-based emissions test has merit for several reasons. The primary benefit of output-based standards is that they recognize energy efficiency as a form of pollution prevention. Using more efficient technologies reduces fossil fuel use and also reduces the environmental impacts associated with the production and use of fossil fuels. Another benefit is that output-based standards allow sources to use energy efficiency as a part of their emissions control strategy. Energy efficiency as an additional compliance option can lead to reduced compliance costs, as well as lower emissions. We want to encourage use of efficient units that displace less efficient, more polluting units. This approach is especially desirable where EGUs are already subject to market-based systems such as the Acid Rain program, NO_X SIP Call, and State trading programs implementing the CAIR, as those programs increase incentives for using efficient units.

Furthermore, an output-based emissions test would comport with recent State efforts. Several States have initiated regulations or permits-by-rule for distributed generation (DG) units, including combustion turbines. States that have made efforts to regulate DG sources include California, Texas, New York, New Jersey, Connecticut, Delaware, Maine, and Massachusetts. Those State rules include emission limits that are output-based, and many allow generators that use combined heat and power (CHP) to take credit for heat recovered. For example, Texas recently passed a DG permit-by-rule regulation that gives facilities 100 percent credit for steam generation thermal output, and incorporates HRSG and duct burners under the same limit. The California Air Resources Board (CARB) also has output-based emission limits, which allow DG units using CHP to take a credit to meet the standards, at a rate of 1 MW-hr for each 3.4 million British thermal units (MMBtu) of heat recovered, or essentially, 100 percent. The draft rules for New York and Delaware also allow DG sources using CHP to receive credit toward compliance with the emission standards.

We request comment on the desirability and feasibility of using an output-based test for measuring emissions increases in the major NSR program. In view of our policy goal to establish a uniform emissions test nationally under the NSPS and NSR programs for existing EGUs, we also request comment on extending an output-based test for measuring emissions increases to the NSPS program. Specifically, we request comment on whether we should revise 40 CFR 60.14 to include an output-based emissions test, either in lieu of the maximum achievable and maximum achieved hourly emissions tests or in addition to these emissions tests. We intend to provide more detailed information concerning the output-based emissions test for both the NSR and NSPS programs in our supplemental proposal.

C. Pollutants to Which the Revised Applicability Test Applies

We request comments on our proposal that the revised emissions test (either our preferred maximum achievable test, the alternative maximum achieved test, or the output-based emissions test) should apply to all regulated NSR pollutants. In light of our policy goal to provide a nationally consistent program and to streamline major NSR for EGUs, we believe it is desirable to provide the alternative test for emissions increases of all regulated NSR pollutants. As described in detail in Section III of this preamble, we do not believe that today's revised emissions test is substantially different from the actual-to-projected-actual test, particularly in light of the substantial SO_2 and NO_X emissions reductions that other programs have achieved or are expected to achieve from EGUs. As we describe in further detail in Section III.C. of this preamble, the application of the major NSR program to EGU emissions increases of regulated NSR pollutants other than SO_2 and NO_X would be unlikely to result in the implementation of any additional controls.

D. Significant Emissions Rates

As we stated, we are not proposing to allow EGUs to exclude emissions increases that fall below a particular significant emissions rate. Our current major NSR regulations allow sources to avoid major NSR applicability if the physical or operational change results in an emissions increase that is below a significant level.

We codified the existing significant rates based on a *de minimis* legal theory that balances the administrative burden of running the program with the environmental benefit of undergoing major NSR review. In codifying the significant rates, we relied on our belief that Congress did not intend to regulate every physical or operational change at a major source. Because a maximum achievable hourly emissions rate test is based on computing a unit's rate of emissions in kg/hr, whereas the existing significant rates are expressed in tons per year (tpy), it is more administratively efficient to eliminate the need to compute significant emission rates from the proposed emissions test.

By eliminating the use of a significant emission rate threshold for modifications, we balance the differences in these tests, and focus permitting authority resources on reviewing all changes that result in increases in existing capacity.[34] We believe that this result is consistent with our interpretation of Congressional intent in that it assures that, at a minimum, increases in existing capacity undergo major NSR review. See a fuller discussion of the legislative history in Section V. of this preamble.

We request comment on our conclusion that the maximum achievable hourly emissions test should regulate all emissions increases and not

[34] To the extent that sources prefer to avoid major NSR by taking enforceable limitations on their potential to emit, reviewing authority resources will also be focused on establishing synthetic minor limits subject to the conditions in § 51.165(a)(5)(ii), § 51.166(r)(2), and § 52.21(r)(4). That is, sources basically have two choices—enforceable limitations on emissions increases or major NSR review for changes that result in increases in existing capacity.

just those that are above the significant rate. We also request comment on the alternative of including a significant emissions rate as a component of the maximum achievable hourly emissions test for major NSR. If we include use of the significant rate within the emissions increase test, sources would have to extrapolate their maximum hourly emission rate to a maximum annual emission rate. We request comment on an appropriate approach for making this extrapolation.

E. Eliminating Netting

Netting has played an important role over the history of the major NSR program by, to some extent, allowing sources to manage plantwide changes in a way that assures that the major stationary source's emissions do not increase. Nonetheless, numerous stakeholders, including individuals among State, environmental, and industry groups, believe that our netting procedures in the existing program are too complicated. State and environmental groups also believe netting allows construction of brand new emissions units to occur without requiring emissions controls. These stakeholders suggested removing the netting provisions or revising the procedures to shorten the contemporaneous period to allow for ''project netting.'' Project netting allows the emissions increases and decreases from a given project to be summed together without the need to review all changes over the previous 5 years.

Because the maximum achievable hourly emissions test is based on increases in kg/hr, including netting within the emissions test would further complicate administration of the program by adding additional calculations to an already complicated process. Accordingly, eliminating the ability to net pollutant increases and decreases would simplify applicability determinations and assure that increases in existing capacity could not occur without preconstruction review and installation of appropriate controls (except where sources otherwise establish enforceable limitations to avoid emissions increases) . Also, one of the advantages of our proposal to eliminate netting is that there would be no unreviewed increases.

Nevertheless, the Court in *Alabama Power* held that the Act requires EPA to allow netting within our regulations (the ''bubble'' approach), because such an approach is consistent with the purposes of the Act. The Court reasoned that Congress intended to ''generate technological improvement in pollution control, but this approach focused upon 'rapid adoption of improvements in technology as new sources are built,' not as old ones [plants] were changed without pollution increases.''

It is important to place this ruling in the context of the rules before the Court at that time. Our 1978 regulations required a source-wide accumulation of emissions increases without providing for an ability to offset these accumulated increases with any source-wide decreases. In finding that we must apply a bubble approach, the Court held that we could not require sources to accumulate increases without also accumulating decreases. It is unclear whether the Court would have reached the same conclusion if the emissions test before the Court only considered the increases from the project under review and not source-wide increases from multiple projects. Moreover, contrary to the *Alabama Power* Court's analysis, some have argued that the netting approach may have impeded Congress' objective of promoting ''rapid adoption of improvements in technology as new sources are built.'' This is because it allows construction of new units at existing facilities without emissions controls, while requiring major NSR for large greenfield sources.

We request comment on our observations related to the *Alabama Power* Court's decision related to netting and whether a major NSR program without netting can be supported under the Act. Specifically, we request comment on whether, in adding the maximum achievable emissions test for EGUs within the major NSR program, we should retain the requirement to compute a net emissions increase. Under this approach, a source would first determine whether an activity results in an increase in maximum hourly emissions, and then the source would determine whether this increase, when considered with other increases and decreases at the major stationary source over the past 5 years, would result in a net emissions increase at the major stationary source. We also request comment on whether we should retain netting, but shorten the contemporaneous period to the time of construction and allow EGUs to use only ''project'' netting in computing whether a physical or operational change results in an emissions increase.

F. Benefits of Maximum Achievable Hourly Emissions Test

We believe that implementing our proposed maximum achievable hourly emissions rate test for EGUs offers significant benefits over the current actual-to-projected-actual emissions test. The proposed regulations (and our alternate proposal) would provide nationwide consistency in how States implement the major NSR program for EGUs. They would also establish a uniform emissions test nationally under the NSPS and NSR programs for existing EGUs. However, we are also requesting comment on whether the proposed maximum achievable hourly emissions test (and our alternate proposals) should be limited to the geographic area covered by CAIR, or to the geographic area covered by both CAIR and BART.

Furthermore, the proposed regulations allow owner/operators to make changes that, without increasing existing capacity, promote the safety, reliability, and efficiency of EGUs. We do not want to discourage plant owners or operators from engaging in activities that are important to restoring, maintaining, and improving plant safety, reliability, and efficiency. Uncertainties inherent in the current major NSR permitting approach can exacerbate the reluctance to engage in these activities. To elaborate on the uncertainty issues: Unless an owner or operator seeks an applicability determination from his or her reviewing authority, it can be difficult for the owner or operator to know with reasonable certainty whether a particular activity would trigger major NSR. This gives the owner or operator five choices, two of which the owner or operator is not likely to select, and the other three of which have significant drawbacks for the productivity of the plant.

First, the owner or operator may simply seek an NSR permit. That course, however, is likely to be time-consuming and expensive, since it will likely result in a requirement to retrofit an existing plant with state-of-the-art pollution controls, which often is very costly and can present significant technical challenges. Therefore, an owner or operator is not likely to select this option if it can be avoided.

Second, the owner or operator may proceed at risk without a reviewing authority determination. That option, however, is also not likely to be attractive where a significant replacement activity is involved, because if the owner or operator proceeds without a reviewing authority determination and if we later find that he or she made an incorrect determination on their own, the owner or operator faces potentially serious enforcement consequences. Those consequences could well include substantial fines and penalties for violation of the CAA (along with the further consequences of violation of the CAA) and a requirement to install state-

of-the-art pollution controls, even though those controls present technical issues or represent a significant enough expenditure that they likely would have deterred the owner or operator from seeking a permit in the first place. The owner or operator is not likely to take this risk if he or she believes there is a high probability of these kinds of consequences and if he or she has other options.

Third, the owner or operator may seek an applicability determination. That process, too, is time-consuming and expensive, albeit typically less so than seeking a permit. Furthermore, there is a possibility that EPA could eventually make a different applicability determination than the State has made, which can add more time and uncertainty to the process. This path presents a potentially significant barrier to EGUs and other industries. This approach also is likely to delay important projects that would enhance the safety, reliability, and efficiency of the plant while the owner/operator waits for the applicability determination.

Fourth, the owner or operator may forego or curtail activities that would enhance the safe, reliable, or efficient operation of its plant, instead opting to repair existing components, even though they are inferior to current-day components because they probably are less advanced and less efficient than current technology. Foregoing the activities altogether will reduce plant safety, reliability and efficiency; curtailing or postponing them does as well, differing only in the degree of these effects.

Finally, the owner or operator may curtail the plant's productive capacity by replacing components with less than the best technology to be more certain that the replacement is within the regulatory bounds. Or he or she may agree to limit the source's hours of operation or capacity or install air pollution controls that are less than state-of-the-art. These alternative courses of action, however, will also result in loss of plant productivity.

The current approach to major NSR is also problematic for State and local reviewing authorities. They require the regulatory authorities to devote scarce resources to make complex determinations, including applicability determinations, and consult with other agencies to ensure that any determinations are consistent with determinations made for similar circumstances in other jurisdictions and/or that other reviewing authorities would concur with the conclusion. In our June 2002 report to the President, we concluded that the current major NSR program has impeded or resulted in the cancellation of projects that would have maintained and improved the reliability, efficiency, or safety of existing energy capacity.

We believe it is desirable to change the approach to major NSR. The current approach discourages sources from replacing components, and encourages them to replace components with inferior components or to artificially constrain production in other ways. This behavior does not advance the central policy goals of the major NSR program as applied to existing sources. The central policy goal is not to limit productive capacity of major stationary sources, but rather to ensure that they will install state-of-the-art pollution controls at a juncture where it otherwise makes sense to do so. We also do not believe the outcomes produced by the approach we have been taking have significant environmental benefits compared with the approach we are proposing today.

We believe that these problems would be significantly reduced by the rule we are proposing today. Our new approach would provide more certainty both to source owners or operators who will be able better to plan activities at their facilities, and to reviewing authorities who will be able better to focus resources on other areas of their environmental programs rather than on time-consuming determinations. The effect should be to remove disincentives to undertaking activities that improve efficiency, safety, reliability, and environmental performance.

We also note that today's proposed emissions test would simplify applicability determinations for sources by using the same test for both the NSPS and NSR programs. Moreover, it eliminates the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, because any increase in the emissions under the maximum achievable emissions test would logically be attributed to the change. It reduces recordkeeping and reporting burdens on sources because compliance will no longer rely on synthesizing emissions data into rolling average emissions. It improves compliance by making the rules more understandable, which correspondingly reduces the reviewing authorities' compliance and enforcement burden.

Nonetheless, despite identifying many of these benefits in our analysis of the Settlement Agreement that EPA had entered into in *Chemical Manufacturer's Association* v. *EPA*, No. 79–112, we rejected the use of that approach because we stated that such an approach was not acceptable for major NSR applicability as a general matter.[35] We based our conclusions on concerns that the Settlement Agreement Approach would allow facilities to generate paper credits for netting and offsets because the facility may never have operated at its full potential emissions. Moreover, we raised concerns that unreviewed increases could lead to increment violations.

Today's proposal differs from the Settlement Agreement Approach in an important way. We retain the existing procedures for calculating offset credits to avoid any possibility of generating paper reductions. Moreover, we requested comment on eliminating or limiting the availability of netting. Either approach would alleviate the possibility of generating paper reductions. One of the advantages of our proposal to eliminate netting is that there would be no unreviewed increases. (That is, all emission increases, including those less than 40 tpy, would be reviewed.) On the other hand, if we continue to include netting provisions in the major NSR applicability test, those provisions will continue to be based on actual emissions.

Importantly, States' implementation of the Acid Rain, CAIR, and BART programs will generate significant reductions in pollution and thereby decrease the likelihood that an unreviewed source could cause an increment violation. We conducted modeling to estimate the impact of the CAIR program on nationwide emissions trends and ambient concentrations. The modeling shows that emissions are predicted to decline in all parts of the country. With nationwide emissions declining, there is a decreased likelihood that unpermitted emissions increases could violate a PSD increment by returning a given geographical area to levels above that area's historical actual levels. We also conducted modeling to estimate the impact of the BART rule on nationwide emissions trends and visibility. The BART modeling shows that emissions will decline beyond those reductions under CAIR, particularly in Class I areas.[36]

[35] We discuss the regulatory history related to the CMA Exhibit B Settlement Agreement in Section V. of today's preamble. *See* also 67 FR 80205, December 31, 2002—item 0030 in E-Docket OAR–2005–0163.

[36] For a complete discussion of the emissions reductions and air quality impacts of the BART rule, see Chapter 3 of the RIA for the BART final rule, available at *http://www.epa.gov/oar/visibility/actions.html* and item 0004 in E-Docket OAR–2005–0163.

Furthermore, our analyses estimate improvements in air quality related values from both the CAIR and BART.[37]

The emissions reductions from the programs that affect electric utilities principally come from cap-and-trade programs such as the Acid Rain Program, the NO_X SIP Call, and the CAIR. Concerns have been expressed at times about how trading programs might have a disparate impact on some populations, especially those located closest to some of the affected emission sources. EPA is developing a methodology to look at the local impacts of these types of programs and will attempt to quantify the impacts on local communities for the final rule.

For all the reasons we articulate in this section, we now believe that it is appropriate to consider the benefits of implementing the maximum achievable hourly emissions increase test.

G. Would States Be Required To Adopt the Revised Emissions Test?

Consistent with our longstanding practice, we are proposing that the revised emissions test would be a core, mandatory, minimum program element for SIPs implementing the part C and part D major NSR programs. We are also proposing that State and local agencies would submit NSR SIP revisions incorporating the revised emissions test within 12 months after promulgation of the final rules. For the reasons we articulate in Section V.C. of this preamble, we believe the maximum achievable hourly emissions test implements Congressional intent for the major NSR program and in a more effective manner for EGUs than the current major NSR program.

Consistent with our longstanding practice, we are also proposing that if a State were to decide it does not want to implement the revised emissions test, that State would need to make a showing that its program is not less stringent than our program.

V. Statutory and Regulatory History and Legal Rationale

This section provides our legal basis and rationale for the proposed changes. In support of our legal basis and rationale, this section provides a more detailed background than that in Section IV. on the emissions increase test used in the NSPS program and major NSR program.

A. The NSPS Program

In the 1970 CAA Amendments, Congress included, for the first time, emission standards for new sources of air pollution, termed ''new source performance standards'' (NSPS). [CAA section 111.] The purpose of the NSPS program was to prevent new air pollution problems by requiring that new sources of emissions, including those from expanded or modified existing facilities, be designed and equipped to incorporate demonstrated emissions controls.[38]

Specifically, Congress required the EPA to set emission limitations for categories of new stationary sources of air pollution based on the best system of emissions reduction, considering costs, that has been adequately demonstrated. Congress also specifically required that the NSPS apply to modifications of existing facilities, and defined ''modification'' in CAA section 111(a)(4) as follows:

> ''The term modification means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' [39]

The statute does not specify how increases in emissions are to be determined and the 1970 legislative history does not directly speak to it. Nonetheless, the legislative history shows that, at a minimum, Congress was concerned about regulating new sources of emissions caused by expanded or modified capacity, as the following two statements indicate:

> Therefore, particular attention must be given to new stationary sources which are known to be either particularly large-scale polluters or where the pollutants are extra hazardous. The legislation, therefore, grants authority to the Secretary of Health, Education, and Welfare to establish emission standards for any such sources which either in the form of entire new facilities or in the form of expanded or modified facilities, or because of expanded or modified operation or capacity, constitute new sources of substantially increased pollution.[40]

> Therefore, it would appear to me that, for instance, an old steel plant which altered its production of a particular unit or operation, even though that unit was an old unit, would be controlled just as its competitor, a new steel plant, would be controlled, where new equipment plus new sources of emissions occur? That is correct.[41]

On December 23, 1971 (36 FR 24877), we promulgated the first NSPS regulations. Consistent with Congressional intent to regulate new sources of emissions, these regulations included a definition of modification applying to affected facilities as follows.

> Modification means any physical change in, or change in the method of operation of, an affected facility which increases the amount of any air pollutant (to which a standard applies) emitted by such facility or which results in the emission of any air pollutant (to which a standard applies) not previously emitted, * * *

Id.

On December 16, 1975, we revised the definition of modification in the NSPS program. 40 FR 58416. Our revisions clarified how to measure emissions increases when there is a physical change or change in the method of operation at an existing facility. Specifically, we added the phrase ''emitted into the atmosphere'' to the definition of modification at 40 CFR 60.2 and added new provisions to define how to measure emissions increases for purposes of determining whether a modification occurs, at 40 CFR 60.14.[42]

Our focus in adding the regulatory phrase ''emission rate to the atmosphere'' was to regulate facilities only when they constitute a new source of emissions. We do not believe that Congress intended to draw existing facilities into NSPS applicability when there was no increase in the amount of pollution that a facility could actually emit to the environment, either because the new equipment did not emit

[37] For our discussion of these impacts related to the CAIR, see the CAIR RIA at 5–1, item 0022 in E-Docket OAR–2005–0163. The CAIR RIA is also available at *http://www.epa.gov/air/interstateairquality/technical.html*. For our discussion of these impacts related to the BART, see the BART RIA at 5–1, available at *http://www.epa.gov/oar/visibility/actions.html* and item 0004 in E-Docket OAR–2005–0163.

[38] See House Report 91–1146 at 5365: The purpose of this authority is to prevent the occurrence of significant new air pollution problems arising from or associated with such new sources. As explained above, such new sources may take the form either of entirely new facilities or expanded or modified facilities, or of expanded or modified operations which result in substantially increased pollution. * * * The emission standards shall provide that sources of such emissions shall be designed and equipped to prevent and control such emissions to the fullest extent compatible with the available technology and economic feasibility as determined by the Secretary.

[39] CAA section 111(a)(4). This section has not been amended since it was inserted into the statute in 1970.

[40] H.R. Rep 91–1146, p. 5361 (1970).

[41] Congressional Record—HR 17090, June 10, 1970 at 19212.

[42] This language concerning modifications was never included in the NSR regulations at §§ 51.165, 51.166, 52.21, 52.24, and Appendix S to part 51. On January 23, 1980 (see 45 FR 5616, item 32 in E-Docket OAR–2005–0163), we amended this language to delete the portions of § 60.14 that implemented the bubble concept, which the United States Court of Appeals for the District of Columbia Circuit rejected in a decision rendered January 27, 1978. [*Asarco, Inc.* v. *EPA,* 578 F.2d 319 (D.C. Cir. 1978)—item 0047 in E-Docket OAR–2005–0163.] Following the Asarco decision, § 60.14 was amended to include the current provisions.

pollutants or because the addition of control devices means that the total emissions rate to the atmosphere did not increase. In the proposed preamble, we described the addition of the regulatory term emitted into the atmosphere'' by reference to ''actual emissions,'' measured as post-control emissions at capacity instead of potential emissions without controls.

The proposed amended definition of ''modification'' also includes a new phrase ''emitted into the atmosphere.'' The new phrase clarifies that for an existing facility to undergo a modification there must be an increase in actual emissions. If any increase in emissions that would result from a physical or operational change to an existing facility can be offset by improving an existing control system or installing a new control system for that facility, such a change would not be considered a modification because there would be no increase in emissions to the atmosphere. The Administrator considered defining ''modification'' so that increases in pre controlled (potential) emissions would be considered modifications. However, the proposed definition of modification is limited to increases in actual emissions in keeping with the intent of section 111 of controlling facilities only when they constitute a new source of emissions * * * Section 60.14(b) provides four mechanisms which the Administrator may use (but to which he is not limited) in determining whether an increase in emissions has occurred * * * [T]hese techniques utilize parameters such as maximum production rate * * *''

39 FR 36946, 36946–7.

As we stated in the preamble for the proposal, we added the regulations in § 60.14 to clarify the phrase ''increases the amount of any air pollutant'' in the definition of modification in § 60.2 . [See 39 FR 36946.] We did not create a new definition of modification in codifying § 60.14, but instead used § 60.14 to define how to determine an actual emissions increase based on the facility's maximum hourly emissions rate considering controls. Under § 60.14(b), we calculate an emissions increase by comparing the hourly emissions rate before and after the physical or operational change using ''parameters such as maximum production rate * * *'' 39 FR 36946, 36947. We clarified in the proposed rule that maximum production rate should not be interpreted to mean the facility's operating design capacity (sometimes referred to as name plate capacity) because this rate ''bears little relationship to the actual operating capacity of the facility.'' *Id.* at 36948. Instead, the maximum production rate refers to ''that production rate that can be accomplished without making major capital expenditures.'' *Id.*

Thus, the final regulations calculate changes in what a source is actually able to emit at its capacity, considering controls. (We may refer to this test as the actually-able-to-emit test.) Under § 60.14(b), we calculate an emissions increase by comparing the hourly emissions rate before and after the physical or operational change using ''parameters such as maximum production rate * * *'' 39 FR 36946, 36947. Some refer to this test as a ''maximum hourly potential-to-potential'' emissions test. However, since the NSPS test is based on actual operating capacity rather than design capacity, we believe that this potential-to-potential terminology can be misleading, and prefer the name ''maximum achievable hourly emission rate'' which is similar to the provision we promulgated in the 1992 WEPCO rule, described below. As we discuss in detail in Section IV.A of this preamble, NSPS applicability based on maximum achievable hourly emissions before and after a change was reiterated in various policy memoranda and applicability determinations over the history of the program.

On July 21, 1992, we further revised the NSPS regulations to clarify how we calculate emissions increases at electric utilities. [See 57 FR 32314 (final rule); 56 FR 27630 (June 14, 1991) (proposed rule).] Among other things, this regulation further defined ''capacity'' for electric utilities subject to the NSPS program. Specifically, we indicated that utilities could use the highest hourly emissions rate achievable by the facility at any time during the 5 years before the change.

In this rulemaking, prompted by litigation involving the Wisconsin Electric Power Company and commonly called the WEPCO rule, we noted that the pre-existing NSPS program ''examines maximum hourly emission rates, expressed in kilograms per hour,'' that is, ''[e]missions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity.'' 57 FR 32316. We explained how to determine an hourly rate, as follows.

An hourly emissions rate may be determined by a stack test or calculated from the product of the instantaneous emissions rate, *i.e.*, the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed (such as pounds of sulfur dioxide emitted per ton of coal burned) times the production rate (such as tons of coal burned per hour) * * *

Id., n. 5.[43]

One of the purposes of the WEPCO rule was to address problems that resulted from the pre-existing method of calculating the maximum hourly emissions rate for NSPS purposes. We stated the following.

Under current regulations, the emissions rate before and after a physical or operational change is evaluated at each unit by comparing the current hourly potential emissions at maximum operating capacity to hourly emissions at maximum capacity after the change. In this calculation, the reviewing authority disregards the unit's maximum design capacity. The original design capacity of a unit, to the extent it differs from actual maximum capacity at the time that the baseline is established due to physical deterioration of the facility, is immaterial to this calculation.

57 FR 32330. We stated that current regulations presented the problem of ''undue emphasis on the physical condition of the affected facility immediately prior to the change * * * For instance, if a unit has broken down and is in need of repairs, the utility's baseline will be artificially low.'' *Id.*

Accordingly, we revised the baseline requirement for electric utilities to include the following constraint.

No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

40 CFR 60.14(h). In characterizing this requirement as a ''modest'' change from the pre-existing regulation, we described this requirement as a

More flexible provision [that] enables units to establish a baseline that is representative of its physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which * * * may bear no relationship to the facility's capacity in recent years.

57 FR 32330. Therefore, the WEPCO rule makes clear that the NSPS applicability test for EGUs is the same test (that is, the actually-able-to-emit

[43] By comparison, we added, ''NSR regulations examine total emissions to the atmosphere,'' that is, ''emissions increases under NSR are determined by changes in annual emissions as expressed in tons per year (tpy).'' *Id.* We explained how to determine the annual emissions as follows:

Annual emissions may be calculated as the product of the hourly emissions rate times the utilization rate, expressed as hours of operation per year, or as the product of an emission factor * * * in units of mass emitted per unit of process throughput times the annual throughput * * *

Thus, we said, both NSPS and NSR calculations include the hourly emission rate, but the difference between the two is that the NSR calculation then adds the annual utilization rate, expressed as hours of operation per year.

test) that is generally applicable. Thus, the only difference in the NSPS applicability test for EGUs and non-EGUs is the method for determining the actual operating capacity; for EGUs it is the actual operating capacity at any time in the previous 5 years and for non-EGUs it is actual operating capacity that is achievable without a capital expenditure.

B. The Major NSR Program

EPA promulgated the first set of PSD regulations in 1974 (39 FR 42510), and the first nonattainment major NSR programs in 1976 (41 FR 55524). At that time, the Act did not contain specific provisions for these programs. Instead, the PSD program evolved from a lawsuit claiming that the Act required EPA to ensure that air quality did not deteriorate in areas where air quality met the NAAQS. *Sierra Club* v. *Ruckelshaus,* 344 F.Supp. 253 (D.D.C 1972). We issued the first nonattainment NSR regulations (known as the Emission Offset Interpretative ruling) because attainment dates had passed and we received questions as to whether, and to what extent, new stationary sources could locate in areas that failed to meet the attainment date.

Our preamble to the 1974 PSD rules explained that we intended the PSD definition of ''modified source'' to be consistent with the definition of that term under the NSPS regulations. 39 FR 42510, 42513. Accordingly, the 1974 PSD regulations defined ''modification'' in essentially the same way for both programs. [See 40 CFR 52.01(d); 39 FR 42514; 1975.] Similar to the NSPS provisions, EPA also included an exclusion for increases in production rate and hours of operation within the regulatory definition of physical change in or change in the method of operation.

Congress expressly added an expanded preconstruction permitting program for new and modified major stationary sources to the CAA in 1977. The 1977 Amendments contained different preconstruction permitting requirements for major stationary sources in attainment and nonattainment areas. In areas meeting the NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), Congress added requirements for the PSD program in part C of title I of the Act. Congress required States to amend their implementation plans to include requirements to prevent the significant deterioration of air quality where such air quality is presently cleaner than existing ambient air quality standards. The main focus of the PSD program was a ceiling on incremental pollution growth. The statute at sections 163(b) and 165(d) included specific ''increments,'' or maximum allowable increases in particulates and sulfur dioxide. In section 166, the 1977 Amendments also required EPA to propose regulations for increments or other means for preventing significant deterioration that would result from the other criteria pollutants. To ensure protection of increments and other means of preventing significant deterioration, Congress established a preconstruction permitting program for major sources that required installation of BACT for major sources. Thus Congress established the PSD program to allow for economic growth in attainment areas, to be accomplished primarily through preservation of increment. The PSD program is implemented primarily through SIP-approved State preconstruction permitting programs meeting the requirements of our regulations at 40 CFR 51.166. Where we have not approved a SIP for an attainment or unclassifiable area, the program is implemented by us or by the States according to the requirements in 40 CFR 52.21.

Congress in 1977 was likewise concerned with permitting new or modified facilities in nonattainment areas. The House proposed a new CAA section 117 for nonattainment areas ''as a means of assuring realization of the dual goals of attainment air quality standards and providing for new economic growth.'' [H.R. Report 95–294, p. 19 (1977), U.S. Code Cong. & Admin. News 1977, p. 1091.] Thus, Congress added the preconstruction permitting program for major stationary sources in nonattainment areas in part D of title I of the 1977 CAA at section 173. The basic requirements of the program as Congress established them in CAA section 173 are still in place: (1) Each major stationary source must go through preconstruction review; (2) the total allowable emissions from new and modified sources must be offset; [44] (3) the source must comply with the lowest achievable emission rate (LAER); (4) there must be a demonstration that all major stationary sources in the State that have the same owner or operator are in compliance; and (5) an alternative sites analysis must be conducted. The preconstruction permitting program for major stationary sources in nonattainment areas, commonly known as the nonattainment major NSR program, is generally implemented through the SIP according to our regulations at 40 CFR 51.165. In transition periods before SIP approval, permits must be issued meeting the conditions of 40 CFR Appendix S, which reflects substantially the same requirements as those in § 51.165.

Following the enactment of the major NSR program in the 1977 CAA, in 1978 we promulgated comprehensive changes to the PSD and nonattainment major NSR regulations to carry out the statutory changes. 43 FR 26380. In the absence of statutory language on how to determine an emissions increase, we initially defined emissions increases in terms of allowable or potential emissions.[45] As with the NSPS regulations, we defined potential emissions as uncontrolled emissions. Nonetheless, when we interpreted 111(a)(4) for the major NSR program, we concluded that the NSPS and NSR program have different purposes. We believed that the NSPS-based definitions and interpretations should not be controlling for NSR purposes. Accordingly, in our 1978 final rules, we defined ''modification'' for NSR differently than we defined it in the NSPS program by including a plantwide approach for reviewing emissions increases (netting), even though the Court held this approach unlawful as applied in the NSPS program. [*Asarco, Inc.* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978).]

Numerous aspects of our 1978 final rules were challenged by industry, State and environmental petitioners. In June 1979, the D.C. Circuit Court issued a per curiam (preliminary) opinion. [*Alabama Power Co.* v. *Costle*, 606 F.2d 1068 (D.C. Cir. 1979).] In response to that opinion, we immediately undertook to revise our regulations consistent with that opinion and proposed significant changes to the method for determining whether a change constitutes a major modification. Under the proposal, a major

[44] Before 1990, Congress provided States with two options for managing the impact of economic growth on emissions. A State could either provide a case-by-case review of each new or modified major source and require such source to obtain offsetting emissions, or the State could implement a waiver provision which allowed the State to develop an alternative to the case-by-case emissions offset requirement. This alternative program became known as the ''growth allowance'' approach. In 1990, Congress invalidated some of the existing growth allowances and shifted the emphasis for managing growth from using growth allowances to using the case-by-case offset approach.

[45] See the first nonattainment area regulations at Appendix S to part 51, December 21, 1976, at 41 FR 55528/1—see item 0034 in E-Docket OAR–2005–0163. Similarly, a ''major modification'' shall include a modification to any structure, building, facility, installation or operation (or combination thereof) which increases the allowable emission rate by the amounts set forth above. *See* also our 1978 regulations at 43 FR 26380 item 0035 in E-Docket OAR–2005–0163.

modification would occur if a source increased its potential to emit a pollutant.

On December 14, 1979, the Court in *Alabama Power* issued an opinion that superseded its *per curiam* decision. [*Alabama Power* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979).] [46] EPA interpreted the Court's opinion as focusing on ''actual emissions'' rather than ''potential to emit.'' [45 FR 52676, 52700.] This led EPA to amend its NSR regulations and to change the baseline for measuring emissions increases from using a source's potential to emit to using the source's ''actual emissions.'' The final rules generally defined pre-change actual emissions based on historical emissions (the average of annual emissions for the 2 years preceding the change), but also included provisions to allow source-specific allowables or potential to emit to be a measure of pre-change actual emissions in certain circumstances. [See 40 CFR 52.21(b)(21).]

Our 1980 regulations resulted in numerous challenges, including challenges to our methodology for calculating emissions increases. These challenges were consolidated in *Chemical Manufacturer's Association* v. *EPA,* No. 79–112. EPA entered into a Settlement Agreement which required us to propose an NSPS-like, hourly-potential-to-hourly-potential emissions increase test for modifications (''CMA Exhibit B'').

In 1992, before implementing the Settlement Agreement, we promulgated revisions to our applicability regulations creating special rules for physical and operational changes at EUSGUs. [See 57 FR 32314 (July 21, 1992).] [47] In this rule, as noted above, commonly referred to as the ''WEPCO rule,'' we adopted an actual-to-future-actual methodology for all changes at EUSGUs except the construction of a new electric generating unit or the replacement of an existing emissions unit. Under this methodology, the actual annual emissions before the change are compared with the projected actual emissions after the change to determine if a physical or operational change would result in a significant increase in emissions. To ensure that the projection is valid, the rule requires the utility to track its emissions for the next 5 years and provide to the reviewing authority information demonstrating that the physical or operational change did not result in an emissions increase.

In promulgating the WEPCO rule, we also adopted a presumption that utilities may use as baseline emissions the actual annual emissions from any 2 consecutive years within the 5 years immediately preceding the change.

On July 23, 1996, we proposed CMA Exhibit B as one alternative as part of a comprehensive proposal to reform the NSR regulations. [61 FR 38250.] Finally, on December 21, 2002, we took final action on certain elements of our 1996 proposal and declined to promulgate the CMA Exhibit B approach. Instead, we revised the emissions calculation procedures to include an actual-to-projected-actual emissions test for all sources. [67 FR 80290.]

While industry, environmental groups and States filed petitions for review with the United States Court of Appeals for the District of Columbia Circuit regarding both our 1980 and 1992 rules, those challenges were not heard and decided until earlier this year when those challenges were consolidated with challenges to our 2002 revisions to the major source NSR program. [See *New York* v. *EPA,* No. 02–1387 (D.C. Cir. June 24, 2005).] The Court upheld EPA's regulations concerning the actual-to-projected-actual test. *Id.,* slip op. at 26. While industry argued that the statute requires EPA to use the same definition of ''modification'' for the NSPS program and NSR programs, the Court concluded that industry had waived the argument and thus declined to address this issue in its ruling.[48]

In a separate part of its opinion, the Court held that EPA had discretion in defining the period of time over which to calculate emissions, for purposes of ascertaining whether a physical or operational change increases those emissions. *Id.* at 39–40. The Court upheld EPA regulations that revised that period as a 2-year period within the 10 years prior the change. The Court stated:

> In enacting the NSR program, Congress did not specify how to calculate ''increases'' in emissions, leaving EPA to fill in that gap while balancing the economic and environmental goals of the statute [citation omitted]. Based on its experience with the NSR program and its examination of the relevant data, EPA determined that a ten-year lookback period would alleviate the problems experienced under the 1980 rule and advance the economic and environmental goals of the CAA * * * [W]e defer to EPA's statutory interpretation under Chevron step 2 * * *.

Id. at 39–40.

In another part of the Court's opinion, the Court held that the NSR modification requirement, which incorporates by reference CAA section 111(a)(4), ''unambiguously defines 'increases' in terms of actual emissions.'' *Id.* at 62. EPA has filed a petition for rehearing in which we argue that this holding was in error, and that the term ''increases'' is ambiguous for NSR purposes and therefore EPA has discretion to promulgate an actuals, allowables, or potentials interpretation.

On June 15, 2005, the United States Court of Appeals for the Fourth Circuit handed down a decision concerning an enforcement action against Duke Energy Corporation concerning major NSR applicability at eight electric utilities. [*United States* v. *Duke Energy Corp.,* No. 04–1763.] The Court ruled that ''because Congress mandated that the PSD definition of 'modification' be identical to the NSPS definition of 'modification,' the EPA cannot interpret ''modification'' under the PSD inconsistently with the way it interprets that term under the NSPS.'' *Id.,* slip op. at 12–14). The Court also stated that ''No one disputes that prior to enactment of the PSD statute, the EPA promulgated NSPS regulations that define the term ''modification'' so that only a project that increases a plant's hourly rate of emissions constitutes a 'modification' '' *Id.,* slip op. at 18. The Court thus held that for purposes of the PSD program, emissions increases must be determined by comparing the pre- and post-change maximum hourly emissions.

C. Legal Rationale

1. Maximum Achievable Hourly Emissions Test

Sections 169(2)(C) and 171(4) of the Act specify that the definition of ''modification'' set forth in CAA section 111(a)(4) applies in the PSD and nonattainment major NSR programs. Pursuant to CAA section 111(a)(4), the term modification means ''any physical change or change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' The statute, however, does not prescribe the methodology for determining when an emissions increase has occurred following a physical change or change in the method of operation. *New York* v. *EPA,* slip op. at 31, 39–40, No. 02–1387

[46] The Court amended the December 14th opinion on April 21, 1980. See item 0024 in E-Docket OAR–2005–0163.

[47] The regulations define ''electric utility steam generating units'' as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts (MW) of electrical output to any utility power distribution system for sale. See, for example, § 51.166(b)(30).

[48] The Court expressed a view that Congress' failure to expressly incorporate the NSPS regulatory definition of NSPS argues against a finding that Congress intended the NSPS definition to apply in implementing the NSR program. *Id.* at 25.

(D.C. Cir. June 24, 2005). Since Congress did not specify how to calculate ''increases'' in emissions, it left EPA with the task of filling that gap while balancing the economic and environmental goals of the CAA. *Id.* at 39–40.

When a statute is silent or ambiguous with respect to specific issues, the relevant inquiry for a reviewing court is whether the Agency's interpretation of the statutory provision is permissible. *Chevron U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 865 (1984). Accordingly, EPA has the discretion to propose a reasonable method by which to calculate emissions increases for purposes of NSR applicability. Although we do not assert that the NSPS interpretation is the only one we can adopt for NSR purposes (we followed quite a different interpretation from 1980 until today), at the very least we believe that the statutory silence on this issue delineates a zone of discretion within which EPA may operate.

As we discuss in the previous section of this preamble, we modeled our early major NSR method for calculating any emissions increases after the existing NSPS program. In the NSPS program, we define major modification as the maximum achievable hourly increase in emissions at actual operating capacity, considering controls. That is, we defined actual emissions as post-controlled emissions at current capacity. Our early NSR regulations defined emissions increases in terms of allowable or potential emissions, consistent with our interpretation that Congress intended the modification definition to apply to expansions in capacity, but not to apply to the use of existing capacity.

As we previously explained, we promulgated the actual-to-potential emissions test [49] in 1980, after interpreting the *Alabama Power* final decision as shifting the focus from regulating increases in existing capacity to regulating possible changes in actual emissions. Our decision to change to a historical actual emissions baseline must be viewed in light of the progress of air quality programs at that time. The air quality was significantly degraded in a number of areas and air emission trends showed a steady decline in the quality of our nation's air in some jurisdictions. State and local air pollution control programs were just developing, and the programs mandated in 1990 by parts 2, 3, and 4 of title I of the Act and programs such as the Acid Rain program, the NO_X SIP Call, CAIR, and BART did not exist. Accordingly, the major NSR program provided States one of the few opportunities under the Clean Air Act to mitigate rising levels of air pollution through regulation of potential emissions increases from existing sources. Moving to an actual-to-potential applicability test was a sensible approach for managing air quality at that time, and interpreting the *Alabama Power* final decision to support this goal was appropriate.

The *Alabama Power* Court recognized EPA's discretion to define the same statutory terms differently in the NSR and NSPS regulations. [*Alabama Power Co.* v. *Costle*, 636 F.2d at 397–98 (EPA has latitude to adopt definitions of the component terms of ''source'' that are different in scope from those that may be employed for NSPS and PSD, due to differences in the purpose and structure of the two programs).] Moreover, while the Court held that potential to emit must be determined considering controls, and that NSR major modifications must be determined considering total or net emissions from the source over a contemporaneous period, the Court otherwise left it to EPA's discretion to determine how emissions increases following a physical change or change in the method of operation were to be determined, including the currency for measuring the emissions increases. *Id.* at 353–54, 401–03.

In using our discretion for defining the component term ''increases in any pollutant emitted'' within the definition of ''modification,'' we are mindful of Congress' directive that the major NSR program be tailored in such a way as to balance the need for environmental protection against the desires to encourage economic growth. In this context, the appropriate methodologies for measuring emissions increases is inherently linked to our responsibility to guide the States in their efforts to achieve and maintain an effective, comprehensive air quality program, of which the major NSR program is only one component. See section 101(a) of the Act. Accordingly, as both we and the States have gained experience in managing air quality, we have amended the applicability provisions of the NSR regulations to better balance the need for environmental protection and economic growth, and the administrative burden of running the program. (See for example 57 FR 32314, July 21, 1992; 67 FR 80186, December 31, 2002; 68 FR 61248, October 27, 2003.)

In light of the progress of air quality programs under the 1990 CAA to reduce EGU emissions and the policy goals of the major NSR program, we considered the appropriate scope of the major NSR program as it applies to existing sources. The NSR program's scope is closely related to the scope of the NSPS program, created 7 years earlier in the CAA Amendments of 1970. In section 111 of the CAA, which sets forth the NSPS provisions, Congress applied the NSPS to ''new sources.'' [CAA sections 111(b)(1)(B), 111(b)(4).] Congress determined that as a general matter it would not impose the NSPS standards on existing sources, instead leaving to the State and local permitting authorities the decision of the extent to which to regulate those sources through ''State Implementation Plans'' designed to implement National Ambient Air Quality Standards (NAAQS). [See CAA section 110.] Congress followed a similar approach in determining the scope of the major NSR program established by the 1977 Amendments to the CAA. As amended, the CAA specifies that State Implementation Plans must contain provisions that require sources to obtain major NSR permits prior to the point of ''construction'' of a source. [CAA sections 172(c)(5); 165(a).] By contrast, the CAA generally leaves to State and local permitting authorities in the first instance the question of the extent, means, and timetable for obtaining reductions from existing sources that are needed to comply with NAAQS. [See CAA sections 172(c)(1), 161.] NSR's applicability to existing sources that undergo a ''modification'' is an exception to this basic concept. This exception likewise finds its roots in the NSPS program's applicability to ''modifications'' of existing sources. The 1970 CAA made the NSPS program applicable to modifications through its definition of a ''new source,'' which it defined as ''any stationary source, the construction or modification of which is commenced after the publication of regulations * * * prescribing a[n applicable] standard of performance * * *.'' [CAA section 111(a)(2).] CAA section 111(a)(4), in turn, defined a ''modification'' as ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted from such source or which results in the emission of any air pollutant not previously emitted.''

[49] The 1980 rules revised the pre-change (baseline) emissions calculation to one based on actual emissions, but retained potential-to-emit for measuring post-change emissions.

The 1980, 1992 and 2002 rules [50] were reasonable interpretations of the statutory language in CAA section 111(a)(4) for purposes of the major NSR program and the air quality needs of the country at those times, and continue to be reasonable in many respects. Nonetheless, we retain discretion to adopt other constructs for determining emissions increases following a physical change or change in the method of operation when they make sense in particular circumstances. The proposed regulations would establish a uniform emissions test nationally under the NSPS and NSR programs for existing EGUs. They would also streamline requirements for EGUs. Accordingly, we believe that it is appropriate to tailor the major NSR program for EGUs to regulate modifications that result in increases to an EGU's existing capacity. The maximum achievable hourly emissions test is an appropriate tool for this purpose.

The Court in *New York* v. *EPA* held that the language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions, instead of potential or allowable emissions. Slip op. at 64. The Court based its opinion, in part, on the *Alabama Power* Court's finding that the term ''emit'' in the phrase ''emit, or have the potential to emit'' within the definition of major emitting facility, is ''some measure of actual emissions.'' *New York* v. *EPA*, slip op. at 63, citing *Alabama Power*, 636 F.2d at 353 (emphasis added).[51]

To the extent that the *Alabama Power* Court's holding relating to the definition of major emitting facility in CAA section 169(1) should have any persuasive value in interpreting a different component term (increases the amount of any air pollutant) in a different definition [definition of modification in CAA 111(a)(4)] in the Act, the Court's reference to ''some measure of actual emissions'' indicates that the statute allows for different ways of measuring actual emissions.

We believe that the maximum achievable hourly emissions test provides ''some measure of actual emissions.'' For most, if not all EGUs, the amount at which the unit is actually able to emit—its maximum achievable hourly rate—is equivalent to that unit's maximum actual hourly rate during the relevant period. States require most, if not all EGUs, to perform periodic performance tests under applicable State Implementation Plans and enhanced monitoring requirements. The NSPS regulations require a source to conduct testing based on representative performance of the affected facility, generally interpreted as performance at current maximum physical and operational capacity. [40 CFR 60.8(c).] [52] Also, in the National Stack Test Guidance that we issued on September 30, 2005, we recommended that facilities conduct performance tests under conditions that are ''most likely to challenge the emissions control measures of the facility with regard to meeting the applicable emission standards, but without creating an unsafe condition.'' Most EGUs actually emit at the highest level at which they are capable of emitting at some time within a 5-year baseline period.

One way in which the maximum achievable hourly emissions test differs from the way actual emissions are measured under the current actual-to-projected-actual test is that the former measures actual emissions over an hourly period rather than over an annual period. When Congress enacted the 1977 amendments to the CAA creating the NSR program, it did not specify how increases in emissions were to be calculated, or over what increment of time emissions should be measured. Nonetheless, Congress was likely aware, before it enacted the 1977 Amendments, that we calculated emissions increases in terms of kg/hr to determine whether a project resulted in a ''modification.'' Congress did not indicate anywhere in the 1977 Amendments or the legislative history that our use of a kg/hr measure of emissions would be contrary to the purposes of the NSR program. Accordingly, we believe that we have discretion to determine the appropriate increment of time over which to measure actual emissions for purposes of determining whether emissions increases have occurred in the major NSR program.

We believe that it is reasonable to use an hourly period to calculate actual emissions for purposes of measuring emissions increases in the major NSR program. Prior to Congress' enactment of the major NSR provisions in the CAA Amendments of 1977, the NSPS regulations calculated emissions increases from physical and operational changes in terms of hourly emissions. Our 1975 NSPS regulations provided that ''any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning * * * of the Act,'' with ''emission rate * * * expressed as kg/hr of any pollutant discharged to the atmosphere.'' [40 FR 58416, 58419 (December 16, 1975)] Even before the 1975 NSPS rule, we put forth a definition of ''modification'' in a 1974 regulation implementing what became known as the ''Prevention of Significant Deterioration'' program. [39 FR 42510 (December 5, 1974).] The regulation's preamble further provided that we intended the term ''modified source'' to be ''consistent with the definition used in the [NSPS].'' *Id.* at 42513.

We further believe that today's revised emissions test does not result in a substantially different outcome from the actual-to-projected-actual test. The current major NSR regulations measure actual emissions differently from the emissions test we are proposing by assessing changes in emissions relative to historical emissions over a baseline period defined in terms of annual emissions. Nonetheless, like the NSPS test, the major NSR regulations allow for consideration of an emissions unit's operating capacity in determining whether a change results in an emissions increase. Under the actual-to-projected-actual test, a source can subtract from its post-project emissions those emissions that the unit could have accommodated during the baseline period and that are unrelated to the change (sometimes referred to as the ''demand growth exclusion''). That is, the source can emit up to its current maximum capacity without triggering major NSR under the actual-to-projected-actual test, as long as the increase is unrelated to the physical or operational change. The NSPS approach thus differs from the major NSR test only by when a source considers operating capacity in the methodology, and by assuming that a source's use of existing operating capacity is unrelated to the change.

Although the approaches differ, applying the maximum achievable hourly emissions test for EGUs in the major NSR program has merit because it reduces the administrative burden of the NSR program. It eliminates the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, because any increase in the emissions under the maximum achievable

[50] 45 FR 52676, August, 7, 1980; 57 FR 32314, July 21, 1992; 67 FR 80186, December 31, 2002. See items 0036, 0027, and 0030 in E-Docket OAR–2005–0163.

[51] As previously stated, the United States has filed a petition for rehearing on this aspect of the Court's decision in *New York* v. *EPA*. See item 0050 in E-Docket OAR–2005–0163.

[52] *See* also 36 FR 24876, December 23, 1971. Referring to performance tests, we stated that ''Procedures have been modified so that the equipment will have to be operated at maximum expected production rate, rather than rated capacity, during compliance tests.''

emissions test would logically be attributed to the change. It reduces recordkeeping and reporting burdens on sources because compliance will no longer rely on synthesizing emissions data into rolling average emissions. In view of this, allowing use of the maximum achievable hourly rate test reasonably balances the economic need of sources to use existing operating capacity with the environmental benefit of regulating those emissions increases related to a change. Moreover, allowing use of this approach for EGUs is a reasonable use of our discretion to define how we measure emissions increases for purposes of the major NSR program, because it reduces administrative burden associated with the emissions calculation procedure, and considers the effectiveness of other regulatory programs in regulating use of existing EGU capacity.

Finally, the test allows sources to undertake projects designed to improve the efficiency, reliability, and safety of the EGU without necessitating a finding that post-change emissions at such a unit are unrelated to regulated physical or operational changes. In our 2003 final rule on the Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion for NSR (68 FR 61248, October 27, 2003), we articulated our position that activities designed to promote safety, reliability, and efficiency of emissions units should not be subject to major NSR, yet it is often these types of projects that raise questions as to whether post-change emissions are related to a change. The maximum achievable hourly emissions test encourages sources to undertake such projects by focusing reviewing authority resources on changes that add new operating capacity rather than on projects that restore a source to normal operations. Importantly, short-term emissions are a good indicator for operating capacity. That is, longer averaging periods, such as an annual basis, can mask spikes in production.

2. Maximum Achieved Hourly Emissions Test

As we stated in Section IV.B. of this preamble, we also believe that, like the maximum achievable hourly emissions test, the maximum achieved emissions test is a measure of a source's actual emissions. The maximum achieved hourly emissions test is based on a specific measure of historical actual emissions during a representative period. Therefore, even though it is not our preferred option, we believe that a test based on maximum achieved hourly emissions satisfies the requirement that major NSR applicability be based on ''some measure of actual emissions.'' For the reasons that we state in Section V.C.1 of this preamble, we believe we have discretion to adopt a maximum hourly achieved emissions test for determining whether there is an increase in emissions following a physical change or change in the method of operation. We request comment on this option and on whether it satisfies the requirement that major NSR applicability be based on a measure of actual emissions.

We request public comment on all aspects of the legal basis in today's proposed action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1230.18.

Certain records and reports are necessary for the State or local agency (or the EPA Administrator in non-delegated areas), for example, to: (1) Confirm the compliance status of stationary sources, identify any stationary sources not subject to the standards, and identify stationary sources subject to the rules; and (2) ensure that the stationary source control requirements are being achieved. The information would be used by the EPA or State enforcement personnel to (1) identify stationary sources subject to the rules, (2) ensure that appropriate control technology is being properly applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. Based on the reported information, the State, local, or tribal agency can decide which plants, records, or processes should be inspected.

The proposed rule would reduce burden for owners and operators of major stationary sources. While we do not expect a change in the number of permit actions due to the proposed changes, we expect the proposed rule would simplify applicability determinations, eliminate the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and reduce recordkeeping and reporting burdens. Over the 3-year period covered by the ICR, we estimate an average annual reduction in burden of about 5,870 hours and $462,000 for all industry entities that would be affected by the proposed rule. For the same reasons, we also expect the proposed rule to reduce burden for State and local authorities reviewing permits when fully implemented. However, there would be a one-time, additional burden for State and local agencies to revise their SIPs to incorporate the proposed changes. We estimate this one-time burden to be about 2,240 annual hours and $83,000 for all State and local reviewing authorities that would be affected by this proposed rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of responding to the information collection; adjust existing ways to comply with any previously applicable

instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizine respondent burden, including use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number OAR–2005–1064. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 20, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by November 21, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's notice on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

We believe that today's proposed rule changes will relieve the regulatory burden associated with the major NSR program for all EGUs, including any EGUs that are small businesses. This is because the proposed rule would simplify applicability determinations, eliminate the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and by reducing recordkeeping and reporting burdens. As a result, the program changes provided in the proposed rule are not expected to result in any increases in expenditure by any small entity.

We have therefore concluded that today's proposed rule would relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule would not contain a Federal mandate that would result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although initially these changes are expected to result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP, these revisions would ultimately simplify applicability determinations, eliminate the burden of reviewing projected future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and reduce the burden associated with making compliance

determinations. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reasons stated above, we have determined that today's notice contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. We estimate an one-time burden of approximately 2,240 hours and $83,000 for State agencies to revise their SIPs to include the proposed regulations. However, these revisions would ultimately simplify applicability determinations, eliminate the burden of reviewing projected future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and reduce the burden associated with making compliance determinations. This will in turn reduce the overall burden of the program. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. There are no Tribal authorities currently issuing major NSR permits. To the extent that today's proposed rule may apply in the future to any EGU that may locate on tribal lands, tribal officials are afforded the opportunity to comment on tribal implications in today's notice. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA specifically solicits comment on this proposed rule from tribal officials. We will also consult with tribal officials, including officials of the Navaho Nation lands on which Navajo Power Plant and Four Corners Generating Plant are located, before promulgating the final regulations.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because we do not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. We believe that, based on our analysis of electric utilities, this rule as a whole will result in equal environmental protection to that currently provided by the existing regulations, and do so in a more streamlined and effective manner.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' [66 FR 28355 (May 22, 2001)] because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In fact, this rule improves owner/operator flexibility concerning the supply, distribution, and use of energy. Specifically, the proposed rule would increase owner/operators' ability to utilize existing capacity at EGUs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practice and procedure, Air pollution control, Electric Generating Unit, BACT, LAER, Nitrogen oxides, Sulfur dioxide, BART, Clean Air Interstate Rule.

Dated: October 13, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–20983 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–WV–0002; FR–7986–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions to meet Phase II of the Nitrogen Oxides (NO_X) SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant conditional approval of a State Implementation Plan (SIP) revision submitted by the State of West Virginia pertaining to nitrogen oxides (NO_X) emission reductions required under the NO_X SIP Call. The SIP revision, required under Phase II of the NO_X SIP Call (Phase II), consists of West Virginia's rule to meet its remaining NO_X emission reduction obligations. In order to meet the April 2005 SIP revision submission due date specified under Phase II, the West Virginia Department of the Environment (WVDEP) adopted this rule using West Virginia's emergency rule procedures. In West Virginia, such emergency rules have a sunset date. In order for West Virginia to have a fully approvable SIP revision to satisfy Phase II, the WVDEP must adopt a permanent rule with an effective date prior to the sunset date of the emergency rule, and must submit the permanent rule as a SIP revision to EPA by July 1, 2006. The WVDEP is currently in the process of adopting its permanent version of the rule to satisfy the Phase II requirements. The WVDEP has submitted a written commitment to EPA stating it will adopt the permanent rule with an effective date prior to the sunset date of the emergency rule, and will submit the permanent rule as a SIP revision to EPA by July 1, 2006. EPA is proposing to grant conditional approval of this SIP revision based upon West Virginia's commitments. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 21, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–WV–0002 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Agency Web site: http://www.docket.epa.gov/rmepub/ RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: campbell.dave@epa.gov.

Mail: R03–OAR–2005–WV–0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operations, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–WV–0002. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304–2943.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: West Virginia's Phase I NO_X SIP Call trading program was approved as part of the West Virginia SIP on May 10, 2002 (67 FR 31733). On April 21, 2004 (69 FR 21604), EPA promulgated Phase II of the NO_X SIP Call which, among other changes, adjusted state budgets downward to reflect emission reductions based upon the application of cost effective controls on stationary internal combustion (IC) engines that emitted more than one ton of NO_X per average ozone season day in 1995. On March 30, 2005, the State submitted a revision to its SIP to satisfy the additional emission reductions required under Phase II. The March 30, 2005 submittal is comprised of an emergency rule that sunsets after 15 months, on June 2, 2006. However, in its March 30, 2005 SIP submittal, the WVDEP indicated that it is in the process of adopting an identical permanent rule. On August 15, 2005, the WVDEP submitted a letter committing to adopt a permanent rule having an effective date prior to the sunset date of its emergency rule, and committing to submit the permanent rule as a SIP revision to EPA by July 1, 2006.

I. Background

EPA issued the NO_X SIP Call (63 FR 57356, October 27, 1998) to require 22 Eastern states and the District of Columbia to reduce specified amounts of one of the main precursors of ground-level ozone, NO_X, in order to reduce interstate ozone transport. EPA found that the sources in these states emit NO_X in amounts that contribute significantly to nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS) in downwind states. In the NO_X SIP Call, the amount of reductions required by states were calculated based on application of available, highly cost-effective controls on source categories of NO_X.

The NO_X SIP Call, including the Technical Amendments which addressed the 2007 electric generating units (EGU) budgets (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), was challenged by a number of state, industry, and labor groups. A summary of the NO_X SIP Call requirements, including details of the court decisions that were made in response to challenges to the rule and impacts of the court decisions on certain aspects of the rule may be found in EPA's rulemaking dated April 21, 2004 (69 FR 21604) entitled, ''Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules.'' The relevant portions of the April 21, 2004 rulemaking that affect West Virginia's obligations under the NO_X SIP Call, and that pertain to the State's requirements for Phase II, are discussed in this document to provide background on the March 30, 2005 SIP revision submitted by the WVDEP.

On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) issued its decision on the NO_X SIP Call, Michigan v. EPA, 213 F.3rd 663 (DC Dir. 2000). While the DC Circuit ruled largely in favor of EPA in support of its requirements under the 1-hour ozone NAAQS, it also ruled, in part, against EPA on certain issues. The rulings against EPA included two areas of the NO_X SIP Call that were remanded and vacated and two areas in which EPA was found to have failed to provide adequate notice of changes in the rule.

In the latter case, the rulings included a failure to provide adequate notice of the change in the definition of EGU as applied to cogeneration (cogen) units that supply electricity to a utility power distribution system for sale in certain specified amounts, and a failure to provide adequate notice of the change in the control level EPA assumed for large stationary internal combustion (IC) engines. The portions of the NO_X SIP Call that were upheld by the Court were termed ''Phase I'' of the rule. With the exception of the remand of the EGU growth factors used in the NO_X SIP Call and the requirements for the 8-hour ozone NAAQS (which EPA stayed due to uncertainty created by the court rulings), those portions of the NO_X SIP Call that had been remanded back to EPA were finalized in the April 21, 2004 rulemaking (69 FR 21604) and termed ''Phase II'' of the rule.

The April 21, 2004 rule finalized specific changes to the definition of EGUs as applied to cogen units, finalized the control levels assumed for large stationary IC engines in the NO_X SIP Call, adjusted states' total budgets (as necessary) to reflect these changes, established a SIP submittal date of April 1, 2005 for states to address the Phase II portion of the budget, and set a compliance date of May 1, 2007 for all affected sources to meet Phase II. As a result of these changes, states that were not already meeting their total NO_X SIP Call emission reduction obligations were required to submit a SIP revision by April 1, 2005 to reduce ozone season NO_X emissions by an incremental amount equivalent to the reductions achieved by controlling IC engines to prescribed levels. The IC engines that comprise the subject states' Phase II inventory were compiled by EPA and termed the EPA's NO_X SIP Call Engine Inventory (65 FR 1222, March 2, 2000). As finalized in the April 21, 2005 rulemaking, the amount of the incremental reductions required was based upon the level of reductions that would occur if large natural gas-fired stationary IC engines were controlled to a level of 82 percent, and large diesel and dual fuel stationary IC engines were controlled to a level of 90 percent.

The change to the definition of cogen units did not have an impact on the Phase I budget previously established for West Virginia. Therefore, in order to meet its NO_X SIP Call obligations, the State was required only to achieve the incremental reductions that EPA calculated based on controlling stationary IC engines to prescribed levels. As in Phase I of the NO_X SIP Call, states have flexibility in how they achieve the incremental reductions required under Phase II. West Virginia chose to require the reductions from large IC engines, allowing creditable reductions on a facility-wide basis, and developed a rule largely based on EPA's model language for Phase II requirements.

II. Summary of SIP Revision

On March 30, 2005, the State of West Virginia submitted a revision to its SIP pertaining to emission reductions to satisfy Phase II of the NO_X SIP Call. The SIP revision consists of Emergency Rule 45CSR1 entitled, ''Control and Reduction of Nitrogen Oxides from Non-electric Generating Units as a Means to Mitigate Transport of Ozone Precursors,'' which amends West Virginia's existing rule 45CSR1 to include the Phase II requirements. The revision applies to owners or operators of large stationary IC engines in the State of West Virginia. A large IC engine is defined as an engine that emitted more than one ton of NO_X per average ozone season day in 1995.

In its March 30, 2005 submittal, West Virginia included an incremental budget demonstration that listed seven large natural gas-fired IC engines that are subject to Phase II, consistent with EPA's NO_X SIP Call Engine Inventory. Application of 82 percent control to these units for the projected 2007 base case resulted in an incremental reduction of 903 tons of NO_X emissions. EPA has determined that an additional reduction of 903 tons of NO_X satisfies all of West Virginia's remaining requirements under the NO_X SIP Call, and that this amount appropriately adjusts the incremental reduction specified in the April 21, 2004 rulemaking.

Emergency Rule 45 CSR1 contains revisions to West Virginia's existing NO_X Budget Trading Program that enables the State to implement the additional requirements under Phase II of the NO_X SIP Call. Sources in West Virginia that are subject to the new requirements must submit a compliance plan to WVDEP by May 1, 2006, and reduce ozone season NO_X emissions in the state by an additional 903 tons beginning May 1, 2007. The revised rule also includes the pertinent definitions associated with stationary IC engines, and also adds a new Section 90 which sets forth general provisions, applicability provisions, the required ozone season NO_X emission reductions, requirements for compliance plans, and the monitoring, recordkeeping, and reporting requirements necessary to determine compliance with the required emission reductions from stationary IC engines. The rule also incorporates the monitoring and reporting revisions set forth in 40 CFR Part 97 to align it with modifications that had been made to 45 CFR Part 75.

III. Proposed Action

EPA is proposing to grant conditional approval of West Virginia's March 30, 2005 SIP revision which consists of West Virginia's Emergency Rule 45CSR1 to meet Phase II of the NO_X SIP Call. For West Virginia's Rule 45CSR1 to become fully approvable, the State of West Virginia must, in accordance with its August 15, 2005 commitment, fulfill the following conditions:

(1) Adopt a permanent Rule 45CSR1 with an effective date prior to the sunset date of the emergency rule, and

(2) Submit permanent rule 45CSR1 as a SIP revision to EPA by July 1, 2006.

Once West Virginia fulfills these conditions, EPA will conduct rulemaking to convert its conditional approval to a full approval. If the conditions are not fulfilled within the specified time frame, any final

conditional approval granted by EPA will convert to a disapproval. EPA is soliciting public comments on proposed action and issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to grant conditional approval of West Virginia Emergency Rule 45CSR1 to meet Phase II of the NO_X SIP Call does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 13, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–20986 Filed 10–19–05; 8:45 am]

BILLING CODE 6560—50—M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–MA–0003; FRL–7986–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the Commonwealth of Massachusetts.

DATES: EPA must receive comments in writing by November 21, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0003 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *brown.dan@epa.gov*

4. Fax: (617) 918–0048

5. Mail: ''RME ID Number R01–OAR–2005–MA–0003'', Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit,

Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street, Boston, Massachusetts 04333–0017, (617) 292–5500.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1659, fax number (617) 918–0659, e-mail *courcier.john@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the Massachusetts Negative Declaration submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: October 13, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–20984 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7985–8]

Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of completeness of the Department of Energy's Waste Isolation Pilot Plant Compliance Recertification Application and announcement of end of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, ''we'' or ''the Agency'') has determined that the Department of Energy's (DOE) Compliance Recertification Application (CRA, or ''application'') for the Waste Isolation Pilot Plant (WIPP) is complete. EPA provided written notice of the completeness decision to the Secretary of Energy on September 29, 2005. The text of the letter is contained in the **SUPPLEMENTARY INFORMATION**. The Agency has determined that the Compliance Recertification Application is complete, in accordance with 40 CFR Part 194, ''Criteria for the Certification and Recertification of the WIPP's Compliance with the 40 CFR part 191 Disposal Regulations'' (Compliance Certification Criteria). The completeness determination is an administrative step that is required by regulation, and it does not imply in any way that the Compliance Recertification Application demonstrates compliance with the Compliance Criteria and/or the disposal regulations. EPA is now engaged in the full technical review that will determine if WIPP remains in compliance with the disposal regulations. As required by the 1992 WIPP Land Withdrawal Act and our implementing regulations, EPA will make a final recertification decision within six months of issuing the completeness letter to the Secretary of Energy.

DATES: EPA opened the public comment period upon receipt of the Compliance Recertification Application (69 FR 29646–49, May 24, 2004). Comments must be received by EPA's official Air Docket on or before December 5, 2005.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0025. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lisa Sharp, telephone number: 202–343–9265 or Ray Lee, telephone number: (202) 343–9601, address: Radiation Protection Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6608J, Washington, DC 20460. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa.gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

I. General

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2004–0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment

system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2004–0025. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2004–0025. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0025.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0025. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0025.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

The Waste Isolation Pilot Plant (WIPP) was authorized in 1980, under section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96–164, 93 Stat. 1259, 1265), ''for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.'' WIPP is a disposal system for transuranic (TRU) radioactive waste. Developed by DOE, WIPP is located near Carlsbad in southeastern New Mexico. TRU waste is emplaced 2,150 feet underground in an ancient layer of salt that will eventually ''creep'' and encapsulate the waste containers. WIPP has a total capacity of 6.2 million cubic feet of TRU waste.

The 1992 WIPP Land Withdrawal Act (LWA; Pub. L. 102–579) [1] limits radioactive waste disposal in WIPP to TRU radioactive wastes generated by defense-related activities. TRU waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The WIPP Land Withdrawal Act further stipulates that radioactive waste shall not be TRU waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The TRU radioactive waste proposed for disposal in WIPP consists of materials such as rags, equipment, tools, protective gear, and sludges that have become contaminated during atomic energy defense activities. The radioactive component of TRU waste consists of man-made elements created during the process of nuclear fission, chiefly isotopes of plutonium. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901–6992k). The waste proposed for disposal at WIPP derives from Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

WIPP must meet EPA's generic disposal standards at 40 CFR part 191, subparts B and C, for high-level and TRU radioactive waste. These standards limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. To determine whether WIPP performs well enough to meet these disposal standards, EPA issued the WIPP Compliance Criteria (40 CFR Part 194) in 1996. The Compliance Criteria interpret and implement the disposal standards specifically for the WIPP site. They describe what information DOE must provide and how EPA evaluates the WIPP's performance and provides ongoing independent oversight. Thus, EPA implemented its environmental radiation protection standards, 40 CFR Part 191, by applying the WIPP Compliance Criteria, 40 CFR Part 194, to the disposal of TRU radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to **Federal Register** notices published in 1985 (50 FR 38066–38089, Sep. 19, 1985) and 1993 (58 FR 66398–66416, Dec. 20, 1993). For more information about 40 CFR part 194, refer to **Federal Register** notices published in 1995 (60 FR 5766–5791, Jan. 30, 1995) and in 1996 (61 FR 5224–5245, Feb. 9, 1996).

Using the process outlined in the WIPP Compliance Criteria, EPA determined on May 18, 1998 (63 FR 27354), that DOE had demonstrated that the WIPP will comply with EPA's radioactive waste disposal regulations at Subparts B and C of 40 CFR Part 191. EPA's certification determination permitted the WIPP to begin accepting transuranic waste for disposal, provided that other applicable conditions and environmental regulations were met. Disposal of TRU waste at WIPP began in March 1999.

Since the 1998 certification decision, EPA has conducted ongoing independent technical review and inspections of all WIPP activities related to compliance with the EPA's disposal regulations. The initial certification decision identified the starting (baseline) conditions for WIPP and established the waste and facility characteristics necessary to ensure proper disposal in accordance with the regulations. At that time, EPA and DOE understood that future information and knowledge gained from the actual operation of WIPP would result in changes to the best practices and procedures for the facility.

In recognition of this, section 8(f) of the amended WIPP Land Withdrawal Act requires EPA to evaluate all changes in conditions or activities at WIPP every five years to determine if WIPP continues to comply with EPA's disposal regulations for the facility. This determination is not subject to standard rulemaking procedures or judicial review, as stated in the aforementioned section of the WIPP Land Withdrawal Act. This first recertification process includes a review of all of the changes made at the WIPP facility since the original 1998 EPA certification decision.

Recertification is not a reconsideration of the decision to open WIPP, but a process to reaffirm that WIPP meets all requirements of the disposal regulations. The recertification process will not be used to approve any new significant changes proposed by DOE; any such proposals will be addressed separately by EPA. Recertification will ensure that WIPP is operated using the most accurate and up-to-date information available and provides documentation requiring DOE to operate to these standards.

EPA received DOE's first Compliance Recertification Application on March 26, 2004. On May 24, 2004, EPA announced the availability of the Compliance Recertification Application and EPA's intent to evaluate compliance with the disposal regulations and compliance criteria in the **Federal Register** (69 FR 29646). At that time, EPA also began accepting public comments on the application.

In a letter dated September 29, 2005, from EPA's Director of the Office of Radiation and Indoor Air, the Agency notified DOE that it had determined that the Compliance Recertification Application for WIPP is complete. This determination is solely an administrative measure and does not reflect any conclusion regarding WIPP's continued compliance with the disposal regulations.

This determination was made using a number of the Agency's WIPP-specific guidances; most notably, the ''Compliance Application Guidance'' (CAG; EPA Pub. 402–R–95–014) and ''Guidance to the U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR Parts 191 and 194'' (Docket A–98–49, Item II–B3–14; December 12, 2000). Both guidance documents include guidelines regarding: (1) Content of certification/recertification applications; (2) documentation and format requirements; (3) time frame and evaluation process; and (4) change reporting and modification. The Agency

[1] The 1992 WIPP Land Withdrawal Act was amended by the ''Waste Isolation Pilot Plant Land Withdrawal Act Amendments,'' which were part of the National Defense Authorization Act for Fiscal Year 1997.

developed these guidance documents to assist DOE with the preparation of any compliance application for the WIPP. They are also intended to assist in EPA's review of any application for completeness and to enhance the readability and accessibility of the application for EPA and public scrutiny.

EPA has been reviewing the Compliance Recertification Application for ''completeness'' since its receipt. EPA's review identified several areas of the application where additional information was necessary to perform a technical evaluation. EPA sent six letters to DOE requesting additional information, which are detailed below:

- *May 20, 2004* (EPA Docket A–98–49, II–B3–72)—EPA requested additional information on the performance assessment and monitoring.
- *July 12, 2004* (EPA Docket A–98–49, II–B3–73)—EPA requested additional information on waste chemistry.
- *September 2, 2004* (EPA Docket A–98–49, II–B3–74)—EPA requested additional references, clarification of issues related to chemistry and actinide solubilities, waste inventory, hydrology, and documentation on computer codes and parameters.
- *December 17, 2004* (EPA Docket A–98–49, II–B3–78)—EPA requested additional information on the Hanford tank wastes that are included in the WIPP waste inventory.
- *February 3, 2005* (EPA Docket A–98–49, II–B3–79)—EPA requested additional information on DOE's proposed MgO emplacement plan.
- *March 4, 2005* (EPA Docket A–98–49, II–B3–80)—EPA requested additional information on performance assessment (PA) issues.

DOE submitted the requested information with a series of 11 letters, which were sent on the following dates:

- July 15, 2004 (EPA Docket A–98–49, II–B2–34).
- August 16, 2004 (EPA Docket A–98–49, II–B2–34).
- September 7, 2004 (EPA Docket A–98–49, II–B2–36).
- September 29, 2004 (EPA Docket A–98–49, II–B2–37).
- October 20, 2004 (EPA Docket A–98–49, II–B2–38).
- November 1, 2004 (EPA Docket A–98–49, II–B2–39).
- December 17, 2004 (EPA Docket A–98–49, II–B2–40).
- January 19, 2005 (EPA Docket A–98–49, II–B2–41).
- March 21, 2005 (EPA Docket A–98–49, II–B2–47).
- May 11, 2005 (EPA Docket A–98–49, II–B2–50).
- September 20, 2005 (EPA Docket A–98–49, II–B2–51).

All completeness related correspondence was placed in our dockets (A–98–49, EDOCKET No. OAR–2004–0025) and on our WIPP Web site (*http://www.epa.gov/radiation/wipp*).

Since receipt of the Compliance Recertification Application, EPA received two rounds of public comments from stakeholder groups regarding both the completeness and technical adequacy of the recertification application. In addition to soliciting written public comments, EPA held a series of public meetings in New Mexico during July 2004, and June 2005, to hear public comments and to discuss WIPP recertification. These comments were instrumental in developing EPA's requests for additional information from DOE, particularly regarding the Hanford tank waste and its inclusion in the WIPP waste inventory.

EPA will now evaluate the complete application in determining whether the WIPP continues to comply with the radiation protection standards for disposal. EPA will also consider any additional public comments and other information relevant to WIPP's compliance. The Agency is most interested in whether new or changed information has been appropriately incorporated into performance assessment calculations for WIPP, and whether the potential effects of changes are properly characterized.

The Agency will review DOE's recertification application to ensure that WIPP will continue to safely contain TRU radioactive waste. If EPA approves the Compliance Recertification Application, it will set the parameters for how WIPP will be operated by DOE over the following five years. The approved Compliance Recertification Application will then serve as the baseline for the next recertification. As required by the WIPP Land Withdrawal Act, EPA will make a final recertification decision within six months of issuing its completeness determination.

September 29, 2005.

Honorable Samuel W. Bodman,
Secretary,
U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Dear Mr. Secretary:

Pursuant to section 8(f) of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act, as amended, and in accordance with the WIPP Compliance Criteria at 40 CFR 194.11, I hereby notify you that the U.S. Environmental Protection Agency (EPA or ''the Agency'') has determined that the U.S. Department of Energy's (DOE) Compliance Recertification Application for WIPP is complete. This completeness determination is an administrative determination required under the WIPP Compliance Criteria, which implement the Agency's Final Radioactive Waste Disposal Regulations at subparts B and C of 40 CFR part 191. While the completeness determination initiates the six-month evaluation period provided for in section 8(f)(2) of the Land Withdrawal Act, it does not have any generally applicable legal effect. Further, this determination does not imply or indicate that DOE's Compliance Recertification Application demonstrates compliance with the Compliance Criteria and/or the Disposal Regulations.

Section 8(f) of the amended Land Withdrawal Act requires EPA to evaluate all changes in conditions or activities at WIPP every five years to determine if the facility continues to comply with EPA's disposal regulations. This first recertification process includes a review of all of the changes made at the WIPP facility since the original 1998 EPA certification decision.

Under the applicable regulations, EPA may recertify the WIPP only after DOE has submitted a ''full'' (or complete) application (see 40 CFR 194.11). Upon receipt of the Compliance Recertification Application on March 26, 2004, EPA immediately began its review to determine whether the application was complete. Shortly thereafter, the Agency began to identify areas of the Compliance Recertification Application that required supplementary information and analyses. In addition, EPA received public comments and held public meetings on the application that identified areas where additional information was needed for EPA's review.

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- September 20, 2005.

All completeness-related correspondence was placed in our dockets (A–98–49, EDOCKET OAR–2004–0025) and on our Web site (*http://www.epa.gov/radiation/wipp).*

Based on the information provided by DOE, we conclude that the Compliance Recertification Application is now complete. Again, this is the initial, administrative step that indicates DOE has provided information relevant to each applicable provision of the WIPP Compliance Criteria and in sufficient detail for us to proceed with a full technical evaluation of the adequacy of the application. In accordance with section 8(f)(2) of the amended Land Withdrawal Act, EPA will make its recertification decision within six months of this letter.

To the extent possible, the Agency began conducting a preliminary technical review of the application upon its submittal by DOE, and has provided the Department with relevant technical comments on an ongoing basis. EPA will continue to conduct its technical review of the Compliance Recertification Application as needed, and will convey further requests for additional information and analyses. The Agency will issue its compliance recertification decision, in accordance with 40 CFR part 194 and part 191, subparts B and C, after it has thoroughly evaluated the complete CRA and considered relevant public comments. The public comment period on our completeness determination will remain open for 45 days following the publication of this letter in the **Federal Register**.

Thank you for your cooperation during our review process. Should your staff have any questions regarding this request, they may contact Bonnie Gitlin at (202) 343–9290 or by e-mail at *gitlin.bonnie@epa.gov*.

Sincerely,

Elizabeth A. Cotsworth.
Director, Office of Radiation and Indoor Air.

Dated: October 13, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–20987 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 387

[Docket No. FHWA–1997–2923]

RIN 2126–AA82 (Formerly RIN 2126–AA28)

Qualifications of Motor Carriers To Self-Insure Their Operations and Fees To Support the Approval and Compliance Process

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This notice is a withdrawal of a proposed rule under RIN 2126–AA28, which was inadvertently deleted from a prior agenda. The 1999 NPRM requested comments on the financial security and collateral requirements of self-insured motor carriers and fees associated with self-insurance. Section 103 of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) directed the Secretary to create a single, on-line Federal system to replace four existing DOT and former ICC systems—one of those being the financial responsibility information system. Because self-insurance is an aspect of carrier financial responsibility, the agency has decided to withdraw the 1999 NPRM and has proposed amendments to the self-insurance regulations within the context of the financial reporting requirements being proposed under a new Unified Registration System and announced in a separate NPRM.

DATES: The NPRM published on May 5, 1999, at 64 FR 24123 is withdrawn as of October 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., Driver and Carrier Operations Division, (202) 366–4001, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 104(h) of the Interstate Commerce Commission Termination Act of 1995 [Pub. L. 104–88, December 29, 1995, 109 Stat. 888] (ICCTA) directed the Secretary to continue to enforce the rules and regulations of the former ICC, which were in effect on July 1, 1995, governing qualifications for approval of a motor carrier as a self-insurer, until the Secretary deemed it in the public interest to revise those rules. Section 104(h) also specified that any revised rulemakings regarding self-insurance must provide for the continuing ability of motor carriers to obtain self-insurance authorizations, and the continued qualification of all carriers conducting self-insured operations pursuant to grants issued by the ICC or the Secretary. On September 23, 1997, the predecessor agency to the Federal Motor Carrier Safety Administration (FMCSA)—the Federal Highway Administration, Office of Motor Carriers—announced its intention to revise the self-insurance regulations in an advance notice of proposed rulemaking (ANPRM) (62 FR 49654). (The Federal Highway Administration, Office of Motor Carriers, became FMCSA on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999).) The public was invited to comment on a proposal to examine the sufficiency of the existing requirements for self-insurance authorizations, as well as the need for additional fees for functions performed in addition to the processing of the initial application. More specifically, the agency announced that it was considering the need for fees to cover costs associated with processing multi-carrier applications and alterations to self-insurance authorizations, and for a monitoring fee to cover costs related to compliance responsibilities. The ANPRM solicited comments on the merits of continuing the self-insurance program and whether congressional action should be proposed to terminate the authorizations.

On May 5, 1999, the agency proposed procedural changes to the self-insurance process for for-hire motor carriers (66 FR 24123). Specifically, the agency would reevaluate the security and collateral requirements of any self-insured carrier that fails to generate from operations, after payment of all expenses except annual self-insurance claims expenses, twice the level of cash needed to pay the self-insurance claims. An additional application fee would be assessed to cover carrier requests for modifications and alternations to self-insurance authorizations that require a reevaluation of the carrier's financial condition. Because the agency was able to process the basic first-time self-insurance applications for less than it was currently charging, the fee for processing the initial application would be reduced from $4,200 to $3,000 for an economic cost savings. Finally, the NPRM proposed implementing additional procedures necessary for motor carriers to establish billing accounts to pay all insurance-related fees required by the agency. The proposal included a schedule of filing fees and general instructions regarding payment.

Section 103 of ICCTA amended Section IV of title 49, United States Code by adding a new sec. 13908. Section 13908 directs the Secretary to issue regulations to replace four systems with a ''single, on-line, Federal system.'' The financial responsibility information system under 49 U.S.C. 13906 is one of the four systems to be merged under the unified system. Because the issue of self-insurance falls under the umbrella of financial responsibility, the agency has decided to withdraw the 1999 NPRM and discuss its proposals within the context of the Unified Registration System (URS) NPRM (published in the

May 19, 2005, **Federal Register** at 70 FR 28989.). Comments to the 1999 NPRM also are addressed in the URS NPRM.

The 1999 self-insurance NPRM published at 66 FR 24123 on May 5, 1999 is withdrawn, and DOT docket FMCSA–1997–2923 is closed. Members of the public who are interested in the issues associated with motor carrier self-insurance are directed to the discussion and proposals relating to self-insurance published in the URS NPRM and DOT Docket Number FMCSA–1997–2349.

Issued on: October 11, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–20718 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 70, No. 202
Thursday, October 20, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—2004-Crop Cane Sugar and Sugar Beet Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice which sets forth the establishment and adjustments to the sugar overall allotment quantity for the 2004 crop year (FY 2005) which runs from October 1, 2004, through September 30, 2005. Although CCC already announced all of the information in this notice, CCC is statutorily required to publish in the **Federal Register** determinations establishing or adjusting sugar marketing allotments. CCC set the 2004-crop overall allotment quantity (OAQ) of domestic sugar to 8.100 million short tons raw value (STRV) on July 16, 2004. On September 28, 2004, CCC allocated the allotments to cane-producing States and allocations to cane and beet sugar processors. On April 29, 2005, CCC revised State cane sugar allotments and cane sugar processor allocations to reflect updated FY 2005 raw cane production forecasts. On June 30, 2005, CCC further revised State cane sugar allotments and cane sugar processor allocations to reflect updated raw cane production forecasts. On August 19, August 30 and September 9, 2005, CCC increased the 2004-crop OAQ by 250,000, 225,000 and 105,000 STRV, respectively, to release blocked refined beet sugar stocks into the tight summer market. Because the cane sector was unable to fulfill its share of the allotment increases on each occasion, the cane shortfall was reassigned first to the CCC inventory and then to imports, as required by the Agricultural Adjustment Act of 1938.

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@wdc.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Section 359b(b)(1) of the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1359bb(a)(1) requires the Secretary to establish, by the beginning of each crop year, an appropriate allotment for the marketing by processors of sugar processed from sugar beets and from domestically produced cane sugar at a level the Secretary estimates will result in no forfeitures of sugar to the CCC under the loan program.

Because Puerto Rico forecast zero production for the 2004 crop, its FY 2005 allotment was reassigned to all other cane processors based on their respective shares of the cane sugar allotment. However, Hawaii did not receive a share of Puerto Rico's reassignment because it was not expected to use all of its own allotment.

When CCC announced an 8.100 million ton OAQ in July 2004, it noted the existence of sugar market uncertainties and that the OAQ could be adjusted as warranted. In April and June, based on updated production, imports, marketing and stocks forecasts in the World Agriculture Supply and Demand Estimates April and June reports (WASDE), CCC merely transferred perceived excess state allotments from Louisiana and Hawaii to Florida and Texas. However, as the severe shortage of sugar became more evident with each summer WASDE report, CCC incrementally released more sugar into the domestic market via OAQ and import increases.

On August 12, 2005, when anomalies in the market indicated a much tighter supply than earlier anticipated, CCC increased the FY 2005 OAQ by 250,000 STRV. On August 19, 2005, the OAQ increase was allotted to cane states and allocated to cane and beet processors and the cane sugar sector supply shortfall was estimated at 141,567 STRV. Of this, 17,120 STRV was reassigned to the CCC inventory (FY 2004 forfeited sugar sold in FY 2005), 40,000 STRV to NAFTA tier 2 imports, and 84,447 STRV to the FY 2005 raw Tariff Rate Quota (TRQ).

Because the domestic sugar shortage continued to persist due to Hurricane Katrina, CCC increased the FY 2005 OAQ another 225,000 tons on August 30, 2005. Since the CCC inventory had been sold, the cane sector shortfall of 102,713 tons was reassigned to imports; another 70,000 tons to tier 2 imports, 22,000 tons for early release of the FY 2006 refined sugar minimum TRQ, and 10,713 tons for later reassignment to the FY 2006 refined TRQ.

Still, as threats continued from domestic sugar users of factory closings due to refined sugar shortages, CCC increased the FY 2005 OAQ another 105,000 tons on September 9 to release all deliverable refined beet sugar stocks into the market. At the same time, CCC increased, for early entry, the FY 2006 refined TRQ another 75,000 tons, of which 47,933 tons counted against the cane sector's FY 2005 production shortfall.

Whenever marketing allotments are in effect and the quantity of sugarcane estimated to be produced in Louisiana, plus a reasonable carryover, exceeds the marketing allotment allocation for Louisiana, CCC is required to limit the amount of sugarcane acreage that may be harvested in Louisiana for sugar or seed. This limitation is referred to as a ''proportionate share'' and is applied to each farm's sugarcane acreage base to determine the quantity of sugarcane that may be harvested on that farm. Because production was expected to be excessive in Louisiana, CCC determined that the proportionate share of a sugarcane acreage base that could be harvested in Louisiana for sugar or seed for the 2004 crop year to be 83.4 percent of each farm's sugarcane acreage base. However, when CCC increased the OAQ on August 12, 2005, CCC determined that Louisiana and the whole cane sector could not fill its FY 2004 crops and Louisiana's proportionate shares were suspended for the 2004 crop.

These actions apply to all domestic sugar marketed for human consumption in the United States from October l, 2004, through September 30, 2005. The established 2004-crop beet and cane sugar marketing allotments are listed in the following table, along with the adjustments that have occurred since:

Signed in Washington, DC on October 6, 2005.

Michael W. Yost,

Executive Vice President, Commodity Credit Corporation.

FY 2005 Overall Allotment Quantity Establishment and Adjustments

	9/28/04 Intitial FY05	Reassignment of Puerto Rican Allotment	9/28/04 FY 2005 Allotments/Allocations	4/29/05 Reassignment	4/29/05 Final	6/30/05 Reassignment	6/30/05 Final	8/19/05 OAQ Change	8/19/05 Reassignment	8/19/05 Final	8/30/05 OAQ Change	8/30/05 Reassignment	8/30/05 Final	9/9/05 OAQ Change	9/9/05 Reassignment	9/9/05 Final
	(thousand, short tons, raw value)															
Beet Sugar	4,402.4	0.0	4,402.4	0.0	4,402.4	0.0	4,402.4	135.9	0.0	4,538.2	122.3	0.0	4,660.5	57.1	0.0	4,717.6
Cane Sugar	3,697.7	0.0	3,697.7	0.0	3,697.7	0.0	3,697.7	114.1	-141.6	3,670.2	102.7	-102.7	3,670.2	47.9	47.9	3,670.2
Reassign Cane Shortfall to CCC	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	17.1	17.1	0.0	0.0	17.1	0.0	0.0	17.1
Reassigned Shortfall to Total Imports	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	124.4	124.4	0.0	102.7	227.2	0.0	47.9	275.1
TOTAL OAQ	8,100.0	0.0	8,100.0	0.0	8,100.0	0.0	8,100.0	250.0	0.0	8,350.0	225.0	0.0	8,575.0	105.0	0.0	8,680.0
Reassign Cane Shortfall to Tier 2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	40.0	40.0	0.0	70.0	110.0	0.0	0.0	110.0
Reassign Cane Shortfall to Raw TRQ	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	84.4	84.4	0.0	0.0	84.4	0.0	0.0	84.4
Reassign Cane Shortfall to Refined TRQ	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	22.0	22.0	0.0	47.9	69.9
Postponed Reassignment to Refined TRQ	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	10.7	10.7	0.0	0.0	10.7
TOTAL REASSIGNED SHORTFALL TO IMPORTS	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	124.4	124.4	0.0	102.7	227.2	0.0	47.9	275.1
BEET PROCESSORS' MARKETING ALLOCATIONS:																
Amalgamated Sugar Co.	917.2	0.0	917.2	0.0	917.2	0.0	917.2	28.3	11.8	957.3	25.5	0.0	982.8	11.9	-11.9	982.8
American Crystal Sugar Co.	1,692.7	0.0	1,692.7	0.0	1,692.7	0.0	1,692.7	52.4	0.0	1,745.1	47.2	-32.8	1,759.4	22.0	-22.0	1,759.4
Holly Sugar Corp.	295.4	0.0	295.4	0.0	295.4	0.0	295.4	9.1	3.8	308.3	8.2	15.5	332.0	3.8	9.0	344.8
Michigan Sugar Co.	281.3	0.0	281.3	0.0	281.3	0.0	442.4	13.7	5.7	461.8	12.3	12.7	486.7	5.7	8.5	501.0
Minn-Dak Farmers Co-op.	274.7	0.0	274.7	0.0	274.7	0.0	274.7	8.5	-25.0	258.1	7.6	-8.6	257.1	3.6	-3.6	257.1
Monitor Sugar Co.	161.2	0.0	161.2	0.0	161.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
So. Minn Beet Sugar Co-op.	282.8	0.0	282.8	0.0	282.8	0.0	282.8	8.7	3.6	295.2	7.9	14.9	318.0	3.7	26.3	348.0
Western Sugar Co.	438.4	0.0	438.4	0.0	438.4	0.0	438.4	13.4	0.0	451.8	12.0	0.0	463.9	5.6	-5.6	463.9
Wyoming Sugar Co.	58.7	0.0	58.7	0.0	58.7	0.0	58.7	1.8	0.0	60.5	1.6	-1.6	60.6	0.8	-0.8	60.6
TOTAL BEET SUGAR	4,402.4	0.0	4,402.4	0.0	4,402.4	0.0	4,402.4	135.9	0.0	4,538.2	122.3	0.0	4,660.5	57.1	0.0	4,717.6
STATE CANE SUGAR ALLOTMENTS:																
Florida	1,812.7	3.4	1,816.1	124.2	1,940.3	13.2	1,953.5	-152.1	158.2	1,959.5	0.0	0.0	1,959.5	0.0	0.0	1,959.5
Louisiana	1,402.3	2.6	1,405.0	-100.0	1,305.0	-25.0	1,279.9	113.6	-146.0	1,247.6	0.0	0.0	1,247.6	0.0	0.0	1,247.6
Texas	157.6	0.3	157.9	10.8	168.7	20.9	189.6	-33.0	34.0	190.6	0.0	0.0	190.6	0.0	0.0	190.6
Hawaii	318.6	0.0	318.6	-35.0	283.6	-9.0	274.6	44.0	-46.1	272.6	0.0	0.0	272.6	0.0	0.0	272.6
Puerto Rico	6.4	-6.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL CANE SUGAR	3,697.7	0.0	3,697.7	0.0	3,697.7	0.0	3,697.7	-27.4	0.0	3,670.2	0.0	0.0	3,670.2	0.0	0.0	3,670.2
CANE PROCESSORS' MARKETING ALLOCATIONS:																
Florida																
Atlantic Sugar Assoc.	152.2	0.3	152.5	-1.7	150.8	0.0	150.8	0.4	2.1	153.3	0.0	0.0	153.3	0.0	0.0	153.3
Growers Co-op. of FL	326.1	0.6	326.7	58.1	384.8	6.3	391.1	-67.1	67.1	391.1	0.0	0.0	391.1	0.0	0.0	391.1
Okeelanta Corp.	383.8	0.7	384.6	20.2	404.8	3.3	408.0	-26.6	26.6	408.0	0.0	0.0	408.0	0.0	0.0	408.0
Osceola Farms Co.	210.3	0.4	210.7	25.4	236.1	1.2	237.3	-28.3	28.3	237.3	0.0	0.0	237.3	0.0	0.0	237.3
U.S. Sugar Corp.	740.3	1.4	741.7	22.1	763.8	2.5	766.3	-30.6	34.1	769.8	0.0	0.0	769.8	0.0	0.0	769.8
TOTAL	1,812.7	3.4	1,816.1	124.2	1,940.3	13.2	1,953.5	-152.1	158.2	1,959.5	0.0	0.0	1,959.5	0.0	0.0	1,959.5
Louisiana																
Alma Plantation	76.5	0.1	76.6	6.8	83.4	-0.1	83.3	-7.3	10.7	86.7	0.0	0.0	86.7	0.0	0.0	86.7
Cajun Sugar Co-op.	106.2	0.2	106.4	3.6	110.0	-3.3	106.7	-1.1	6.7	112.3	0.0	0.0	112.3	0.0	0.0	112.3
Cora-Texas Mfg. Co.	130.3	0.2	130.5	9.5	140.0	-3.5	136.5	-7.1	3.6	133.0	0.0	0.0	133.0	0.0	0.0	133.0
Harry Laws & Co.	57.0	0.1	57.1	-0.9	56.2	3.6	59.8	-3.2	-0.7	56.0	0.0	0.0	56.0	0.0	0.0	56.0
Iberia Sugar Co-op.	67.7	0.1	67.8	-19.3	48.5	-5.2	43.4	23.9	-21.6	45.7	0.0	0.0	45.7	0.0	0.0	45.7
Jeanerette Sugar Co.	64.1	0.1	64.2	-10.9	53.3	-2.9	50.4	13.3	-13.2	50.5	0.0	0.0	50.5	0.0	0.0	50.5
Lafourche Sugars Corp.	76.4	0.1	76.5	3.2	79.7	-2.0	77.8	-1.9	4.2	80.1	0.0	0.0	80.1	0.0	0.0	80.1
Louisiana Sugarcane Co-op.	87.2	0.2	87.4	-9.5	77.9	-1.5	76.4	10.3	-18.5	68.2	0.0	0.0	68.2	0.0	0.0	68.2
Lula Westfield, LLC	165.6	0.3	165.9	0.0	165.9	-4.8	161.1	3.5	-2.9	161.7	0.0	0.0	161.7	0.0	0.0	161.7
M.A. Patout & Sons	368.4	0.7	369.1	-47.4	321.6	5.0	326.6	39.4	-65.8	300.2	0.0	0.0	300.2	0.0	0.0	300.2
St. Mary Sugar Co-op.	92.8	0.2	93.0	-5.2	87.8	-2.7	85.1	7.1	-9.6	82.6	0.0	0.0	82.6	0.0	0.0	82.6
So. Louisiana Sugars Co-op.	110.2	0.2	110.4	-29.8	80.6	-7.7	72.9	36.6	-38.8	70.7	0.0	0.0	70.7	0.0	0.0	70.7
TOTAL	1,402.3	2.6	1,405.0	-100.0	1,305.0	-25.0	1,279.9	113.6	-146.0	1,247.6	0.0	0.0	1,247.6	0.0	0.0	1,247.6
Texas																
Rio Grande Valley	157.6	0.3	157.9	10.8	168.7	20.9	189.6	-33.0	34.0	190.6	0.0	0.0	190.6	0.0	0.0	190.6
Hawaii																
Gay & Robinson, Inc.	73.1	0.0	73.1	0.0	73.1	-1.6	71.6	1.6	-1.9	71.2	0.0	0.0	71.2	0.0	0.0	71.2
Hawaiian Commercial & Sugar Company	245.5	0.0	245.5	-35.0	210.5	-7.4	203.1	42.4	-44.1	201.4	0.0	0.0	201.4	0.0	0.0	201.4
TOTAL	318.6	0.0	318.6	-35.0	283.6	-9.0	274.6	44.0	-46.1	272.6	0.0	0.0	272.6	0.0	0.0	272.6
Puerto Rico																
Agraso	4.1	-4.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Roig	2.3	-2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	6.4	-6.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

[FR Doc. 05–20960 Filed 10–19–05; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Durango Mountain Resort 2004 Master Development Plan; San Juan National Forest; La Plata County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the anticipated environmental effects of the Durango Mountain Resort (DMR) 2004 Master Development Plan. The MDP includes plans to upgrade and expand DMR within the existing Special Use Permit (SUP) area to achieve a balance of guest service facilities and skiing opportunities with existing and proposed visitation, thereby enhancing the quality of the recreation experience. Additionally, the proposal includes plans to upgrade and increase the multiple use trails network on NFS lands, due to the displacement of multiple use trails on private lands from approved DMR base area development; and develop a trailhead to include toilet facilities and parking on the east side of Highway 550, outside of DMR's SUP area.

The major aspects of the Proposed Action include:

• Replace existing lifts 2 and 8 with higher capacity lifts along their existing alignments, and shorten Lift 6 along its same alignment while utilizing the same lift equipment.

• Install one six-person lift (Lift 11), five three or four-person chairlifts (lifts 12, 13, 14, 16 and 17), one surface beginner lift (Lift 15), and four lateral surface (transfer lifts—T1, T2, T2′ and T3).

• Construct new roads to access Lift 11 top terminal (1,000 feet), Lift 2 bottom terminal (250 feet), Lift 14 top terminal (800 feet), and Lift 16 bottom terminal (200 feet). Bury power line from the top of Lift 4, down Salvation trail to the base of Lift 11, and along lifts T2, T2′ and T3 to service new lifts.

• Create 17 new trails primarily in the areas associated with new lifts to improve the overall terrain distribution by skier ability level and to better meet the skier market demand.

• Improve four trails within the existing trail network and develop one gladed area and one tree skiing area with 20 percent tree thinning.

• Re-route the existing snowmobile access route.

• Install snowmaking infrastructure, make snow on the first 400 feet of the proposed re-route, and groom the re-route periodically to create a smooth ridable surface for snowmobile riders of all ability levels.

• Develop a snowmobile parking/staging area along Hermosa Park Road, north of Purgatory Village on the west side of Highway 550, which would accommodate cars, trucks, and trailers.

• Relocate the existing snowmobile outfitter and guide to the top of the Twilight Lift (Chair 4).

• Expand snowmaking coverage on 14 existing trails and two proposed trails (detailed below) by approximately 149 acres for a resort total of 364 acres.

Styx	The Bank	Divinity	Dead Spike
Lower Hades	Upper Hermosa	Pinkerton Toll Road	Legends
Lower Catharsis	Angel's Tread	Nirvana	Proposed Run
Mercy	Columbine	Peace	Proposed Snowmobile Re-route

• Expand the existing Powderhouse Restaurant by approximately 11,000 square feet to include a restaurant with 419 additional seats, restrooms, a ski school desk, retail services, and public lockers. Expand the on-site septic system.

• Expand the existing Dante's Restaurant by 1,200 square feet to include a restaurant with 473 additional seats and guest services similar to those at the Powderhouse. This facility would continue to operate during the winter season and is proposed for summer use as well. Re-drill two existing wells to produce a higher water flow for domestic water needs. Upgrade the on-site septic system.

• Construct a new 13,500 square foot lodge adjacent to the top terminal of Twilight Lift (#4) to include a 444-seat restaurant, restrooms, a ski school desk, retail, and public lockers. This facility is proposed for winter and summer use. Haul domestic water from existing storage tanks or proposed well and develop an on-site septic system.

• Drill one additional well along the Pinkerton Toll Road ski trail to provide additional domestic water for the resort.

• Double the size of the aboveground fuel storage tanks at the mid-mountain maintenance building.

• Provide additional multiple use trails and a trailhead. The trailhead will include toilet facilities and a parking area with a capacity of approximately 36 vehicles. The sleigh ride/American with Disablities Act (ADA) accessible trail will be eight feet wide to accommodate the sleigh and will meet all ADA requirements. Proposed trail additions include: hiking (0.6 mile), mountain biking (0.7 mile), Nordic skiing (1.7 Km), Sleigh ride/ADA accessible (1.0 Km).

DATES: Comments concerning the scope of the analysis must be received by November 21, 2005.

ADDRESSES: Written comments concerning this notice should be addressed to Richard Speegle at the San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301. Comments may also be sent via e-mail to *richard_speegle@co.blm.gov* or via facsimile to (970) 375–2973.

FOR FURTHER INFORMATION CONTACT: Richard Speegle, Supervisory Recreation Planner, at the Public Lands Center via telephone at (970) 375–3310. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Proposed Action addresses issues related to the recreation experience. Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the Forest Service and administered by the San Juan National Forest. All elements of the proposal remain within the existing SUP boundary area, except the additional proposed multiple use trails project outside the DMR SUP area.

The proposed improvements are consistent with the San Juan National Forest Land and Resource Management Plan (Forest Plan). The proposed improvements are considered necessary in light of current resort deficiencies and projected future visitation.

Purpose and Need for Action

The Forest Service and Durango Mountain Resort (DMR) cooperatively identified a purpose for this proposal, which is to upgrade and expand DMR within the existing Special Use Permit (SUP) area to achieve a balance of guest service facilities and skiing opportunities with existing and proposed visitation, thereby enhancing

the quality of the recreation experience. An additional purpose for this proposal is to upgrade and expand the existing and displaced multiple use trails system on the east side of Highway 550, including Nordic skiing, sleigh ride, equestrian, ADA accessible, and hiking; and increase the existing mountain biking trails within the DMR SUP to provide continued public access to maintain and improve the recreation experience.

Responsible Official

The responsible official is Mark Stiles, Forest Supervisor for the San Juan National Forest, Public Lands Center, 15 Burnett Court, Durango, CO 81301. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Nature of Decision To Be Made

Based on the analysis that will be documented in the forthcoming EIS, the responsible official for this project, the Forest Supervisor of the San Juan National Forest, will decide whether or not to implement, in whole or in part, the Proposed Action or another alternative developed by the Forest Service.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to DMR's proposal. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Preliminary Issues

Identified preliminary issues include:

- Water quantity and quality.
- Wetlands.
- Wildlife and vegetation (Threatened, Endangered, and Sensitive species).
- Quality of the recreation experience.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the draft environmental impact statement, including the identification of the range of alternatives to be considered. While public participation is strictly optional at this stage, the Forest Service believes that it is important to give reviewers notice of several court rulings related to public participation in the subsequent environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments also may address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality regulations which implement the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Dated: October 13, 2005.

Pauline E. Ellis,

Columbine District Ranger, San Juan National Forest.

[FR Doc. 05–20964 Filed 10–19–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on October 27, 2005, from 3:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: e-mail *dmcintosh@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review Minutes From the June 23, 2005 Meeting; (3) Outcome of the Lake Co. Board of Supervisors Meeting; (4) Bob Lossius/Update on Middle Creek Weirs Project & Field Trip; (5) Project Review and Discission; (6) Recommend Projects/Vote; (7) Discuss Project Cost Accounting USFS/County of Lake; (8) Set Next Meeting Date; (9) Public Comment Period; Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time. (10) Adjourn.

Dated: October 5, 2005.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 05–20988 Filed 10–19–05; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Certain Cut–To-Length Carbon–Quality Steel Plate Products from Italy; Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 20, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Martin; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–5253.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for completing the preliminary results of antidumping duty administrative review of certain cut–to-length carbon–quality steel plate products (''CTL Plate'') from Italy.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on CTL Plate from Italy on February 10, 2000. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut–To-Length Carbon–Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000). Nucor Corporation, a domestic interested party, requested that the Department conduct an administrative review of the order. See Letter from Nucor Corporation, dated February 28, 2005. On March 23, 2005, the Department published the initiation notice of the administrative review of the antidumping duty order on CTL Plate from Italy. *See Initiation of Antidumping Duty and Countervailing Duty Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005). The deadline for issuing the preliminary results of administrative review is currently October 31, 2005.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend this deadline to a maximum of 365 days. In this case, the Department requires additional time to further analyze one respondent's claims about knowledge and the ultimate destination of subject imports. Therefore, the Department determines that it is not practicable to complete the review by October 31, 2005. For this reason, we are extending the time limit for completing the preliminary results to no later than February 28, 2005, in accordance with section 751(a)(3)(A) of the Act. We intend to issue the final results of review no later than 120 days after publication of the notice of the preliminary results.

This notice is being issued and published in accordance with section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 13, 2005.

Holly A. Kuga,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–5793 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of the Preliminary Results of New Shipper Antidumping Duty Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting new shipper antidumping duty reviews of freshwater crawfish tail meat from the People's Republic of China (''PRC'') in response to requests by respondents Shanghai Sunbeauty Trading Co., Ltd., (''Shanghai Sunbeauty''), Jiangsu Jiushoutang Organisms–Manufactures Co., Ltd., (''Jiangsu JOM''), and Qingdao Wentai Trading Co., Ltd., (''Qingdao Wentai''). These reviews cover shipments to the United States for the period September 1, 2004, to February 28, 2005, by these three respondents. For the reasons discussed below, we are extending the preliminary results of these new shipper reviews by an additional 120 days, to no later than February 23, 2006.

EFFECTIVE DATE: October 20, 2005.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Stephen Berlinguette; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1386 and (202) 482–3740, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai in accordance with 19 CFR 351.214(c) for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. On April 29, 2005, the Department found that the requests for review with respect to Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai met all the regulatory requirements set forth in 19 CFR 351.214(b) and initiated these new shipper antidumping duty reviews covering the period September 1, 2004, through February 28, 2005. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 70 FR 23987 (May 6, 2005).

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated (19 CFR 351.214 (i)(2)).

The Department has determined that the review is extraordinarily complicated as the Department must gather additional publicly available information, issue additional supplemental questionnaires, and conduct verifications of the three respondents. Based on the timing of the case and the additional information that must be gathered and verified, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Accordingly, the Department is extending the time limit for the completion of the preliminary results by 120 days from the original October 26, 2005, deadline, to February 23, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results will, in turn, be due 90 days after the date of issuance of the preliminary results, unless extended. This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: October 14, 2005.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5790 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Notice of Court Decision Not in Harmony

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 14, 2005, the United States Court of International Trade (''CIT'') held void *ab initio* the Department of Commerce's (''the Department'') initiation of the sixth administrative review of the antidumping duty order with regard to PAM, S.p.A. and JCM, Ltd. (''PAM'') in all respects. *See PAM S.p.A. & JCM, Ltd. v. United States*, Court No. 04–00082, Slip. Op. 05–124 (CIT, Sept. 14, 2005) (''*PAM v. United States*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that the *PAM v. United States* decision was ''not in harmony'' with the Department's original results.

EFFECTIVE DATE: September 24, 2005.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0395.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order for certain pasta from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 67 FR 44172 (July 1, 2002). In response, the Department received requests for review of thirteen respondent companies, including PAM, from domestic petitioners.[1] Petitioners served their requests for administrative reviews upon all respondent companies except for PAM. On August 27, 2002, the Department published a notice of initiation of its sixth antidumping duty administrative review covering the period of July 1, 2001, through June 30, 2002, listing PAM and twelve other companies as respondents. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). Thereafter, PAM notified the Department that PAM was not served properly with a request for review. On August 7, 2003, the Department published its preliminary results of the sixth administrative review of the antidumping duty order where it applied adverse facts available for PAM to arrive at an antidumping margin of 45.49 percent. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 68 FR 47020 (August 7, 2003). On February 10, 2004, the Department published its final results, which affirmed its decisions in the preliminary results. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 6255 (Feb. 10, 2004).

PAM challenged that the initiation of this review, as well as its subsequent results, should be void *ab initio* because petitioners failed to serve their request for initiation of the review in violation of 19 C.F.R. § 351.303(f)(3)(ii) (2002). The CIT granted PAM's motions for judgment on the agency record, held void *ab initio* the initiation of the sixth administrative review of the antidumping duty order with respect to PAM, and directed the Department to rescind the sixth administrative review of the antidumping duty order with respect to PAM.

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(e), the Department must publish notice of a decision of the CIT which is ''not in harmony'' with the Department's results. The CIT's decision in *PAM v. United States* was not in harmony with the Department's final antidumping duty results. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*. In addition, this notice will serve to continue the suspension of liquidation. If this decision is not appealed, or if appealed, it is upheld, the Department will rescind the sixth administrative review of the antidumping duty order with respect to PAM.

Dated: October 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5794 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] New World Pasta Company, Dakota Growers Pasta Company, Borden Foods Corporation, and American Italian Pasta Company.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film from Korea; Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on polyethylene terephthalate (PET) film from Korea would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of this antidumping duty order.

EFFECTIVE DATE: October 20, 2005.

FOR INFORMATION CONTACT: Dana Mermelstein or Robert James, AD/CVD Operations, Offices 6 and 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–1391 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The antidumping duty order on PET film from Korea covers shipments of all gauges of raw, pre–treated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or co–extruded. The films excluded from this order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order. PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00.[1]

[1] Effective July 1, 2003, the HTS subheading 3920.62.00.00 was divided into 3920.62.00.10

While the HTS subheading is provided for convenience and for customs purposes, the written description remains dispositive as to the scope of the product coverage.

Background

On February 2, 2005, the Department initiated and the ITC instituted sunset reviews of the antidumping duty order on PET film from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 5415 (February 2, 2005) and *Polyethylene Terephthalate (PET) Film from Korea, Investigation No. 731–TA–459 (Second Review)*, 70 FR 5473 (February 2, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of margins likely to prevail were the order to be revoked. *See Polyethylene Terephthalate Film from Korea; Five year (Sunset) Reviews of Antidumping Duty Order; Final Results*, 70 FR 53627 (September 9, 2005). On October 3, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on PET film from Korea would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See USITC Publication 3800 (September 2005) and *Polyethylene Terephthalate (PET) Film from Korea, Investigation No. 731–TA–459 (Second Review)*, 70 FR 58748 (October 7, 2005).

Determination

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on PET film from Korea. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2010.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: October 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5792 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–DS–S

(metallized PET film) and 3920.62.00.90 (non-metallized PET film).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702, A–580–813, A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings from Japan, South Korea, and Taiwan; Continuation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on certain stainless steel butt–weld pipe fittings (pipe fittings) from Japan, South Korea, and Taiwan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of these antidumping duty orders.

EFFECTIVE DATE: October 20, 2005.

FOR FURTHER INFORMATION: Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–1391.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2005, the Department and the ITC instituted sunset reviews of the antidumping duty orders on pipe fittings from Japan, South Korea, and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 5415 (Feb. 2, 2005). As a result of its review, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. *See Certain Stainless Steel Butt–Weld Pipe Fittings from Japan, South Korea, and Taiwan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 53631 (Sept. 9, 2005). On October 3, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on pipe fittings from Japan, Korea, and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 3801 (September 2005) and *Stainless Steel Butt–Weld Pipe Fittings from Japan, Korea, and Taiwan*, Inv. Nos. 731–TA–376, 563, and 564 (Second Review) 70 FR 58748 (Oct. 7, 2005).

Scope of the Orders

Japan

The products covered by this order include certain stainless steel butt–weld pipe and tube fittings, or SSPFs. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas. This merchandise is classifiable under the Harmonized Tariff Schedules of the United States (HTSUS) subheading 7307.23.0000. While the HTSUS subheading is provided for convenience and for customs purposes, the written product description remains dispositive as to the scope of the product coverage.

South Korea

The products subject to this order are certain welded stainless steel butt–weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this order are

classifiable under subheading 7307.23.00 of the HTSUS.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Taiwan

The products subject to this order are certain stainless steel butt–weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain welded stainless steel butt–weld pipe fittings (pipe fittings) are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this order are classifiable under subheading 7307.23.00 of the HTSUS.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on pipe fittings from Japan, South Korea, and Taiwan. U.S. Customs and Border Protection (CBP) will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than October 2010.

These five-year (sunset) reviews and notices are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: October 14, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5791 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5255–26]

Availability of Grants Funds for Fiscal Year 2006

AGENCY: Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; re-open competition solicitation.

SUMMARY: The National Oceanic and Atmospheric Administration, Oceanic and Atmospheric Research publishes this notice to reopen the competitive solicitation for the Ballast Water Technology Demonstration Program (Research, Development, Testing and Evaluation Facility).

DATES: The new deadline for the receipt of preliminary proposals for the Ballast Water Technology Demonstration Program (Research, Development, Testing and Evaluation Facility) is 5 p.m. EDT October 27, 2005 for both electronic and paper applications. The deadline for receipt of FULL proposals remains unchanged at 4 p.m. EST, January 6, 2006.

ADDRESSES: The address for submitting Proposals electronically is: *http://www.grants.gov/*. (Electronic submission is strongly encouraged). Paper submissions should be sent to the National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG–Ballast Water, 1315 East-West Highway, R/SG, Rm. 11732, Silver Spring, MD 20910. Telephone number for express mail applications is 301–713–2445. Full proposals should be submitted through *Grants.gov*.

FOR FURTHER INFORMATION CONTACT: Dorn Carlson, NOAA National Sea Grant Office, 301–713–2435; via Internet at *Dorn.Carlson@noaa.gov*; or Pamela Thibodeaux, U.S. Fish and Wildlife Service, 703–358–2493; via Internet at P*amela_Thibodeaux@fws.gov*. Further background information can be obtained from the above information contacts, or on the Ballast Water Program Web site, *http://www.seagrant.noaa.gov/research/nonindigenous/ballast*.

SUPPLEMENTARY INFORMATION: This program was originally solicited in the **Federal Register** on June 30, 2005, as part of the June, 2005 NOAA Omnibus solicitation. The original deadline for receipt of preliminary proposals was 4 p.m., EDT, on September 23, 2005. NOAA re-opens the solicitation period to provide the public more time to submit preliminary proposals. The new deadline for the receipt of proposals is October 27, 2005, for both electronic and paper applications. All applications that are received between September 23, 2005 and the date of publication of this notice will be considered timely. All other requirements for this solicitation remain the same.

The deadline for receipt of FULL proposals remains unchanged at 4 p.m. EST, January 6, 2006. The preliminary proposal solicitation for the other Ballast Water Technology Demonstration Program (Treatment Technology Demonstration Projects) is not reopened, and the submission deadline for full proposals in that competition remains unchanged.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177–66178, for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act

(NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 13, 2005.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–21027 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports From China

October 17, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber curtains and drapery (Category 369 Part/666 Part).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

On June 22, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber curtains and drapery (Category 369 Part/666 Part) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. *See Solicitation of Public Comment on Request for Textile and Apparel Safeguard Action on Imports from China*, 70 FR 41376 (July 19, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60 day determination period for this case expired on October 17, 2005. The Committee is unable to make a determination within the determination period because it is continuing to evaluate production data for cotton and man-made fiber curtains and drapery. Therefore, the Committee is extending the determination period to November 30, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–21107 Filed 10–19–05; 8:45 am]

BILLING CODE 3510–DS–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board

will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9 a.m., December 7, 2005.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: In this public hearing and meeting, the Board will consider the Department of Energy's (DOE) incorporation of safety into the design and construction of new and modification of existing DOE defense nuclear facilities. The Board is responsible, pursuant to its statutory charter, to review and evaluate the content and implementation of standards relating to the design and construction of such facilities. The Board has recently observed that improvement in the incorporation of safety in the design of certain new defense nuclear facilities may be possible. In this December 7th hearing and meeting, the Board will explore DOE's safety policies, expectations, and processes for integrating safety into design and construction of new and modification of existing facilities. The Board will collect information needed to understand and address any health or safety concerns that may require Board action with respect to safety in design. This will include, but is not limited to, presentations from both DOE and National Nuclear Security Administration (NNSA) senior management officials concerning integration of safety into the design construct. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on December 6, 2005, will be scheduled for time slots, beginning at approximately 11:30 a.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9 a.m. hearing and meeting.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC, office. The Board will hold the record open until January 7, 2006, for the receipt of additional materials. A transcript of the hearing will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: October 11, 2005.

A.J. Eggenberger,

Chairman.

[FR Doc. 05–21052 Filed 10–18–05; 9:19 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities (CFDA No. 84.327A)

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2006; Correction.

SUMMARY: On September 1, 2005, we published in the **Federal Register** (70 FR 52084) a notice inviting applications for new awards for FY 2006 for the Technology and Media Services for Individuals with Disabilities—Steppingstones of Technology Innovation for Children with Disabilities Competition. The notice contained an incorrect time period for an individual to have completed and graduated from a doctoral program.

On page 52085, second column, second paragraph of paragraph (f), the information in the parenthetical is corrected to read ''(*i.e.*, for FY 2006 awards, projects may support individuals who completed and graduated from a doctoral program no earlier than the 2002–2003 academic year).''

FOR FURTHER INFORMATION CONTACT: Tom Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 4066, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7369.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 14, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–21019 Filed 10–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 3, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–107, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO, 80021; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and Discussion on the Rocky Flats Interim Surveillance and Maintenance Plan.
2. Consideration of Board Proposal to Hire an Outside Expert to Develop a Risk Communication Strategy for Rocky Flats.
3. Presentation and Discussion on the Post-Closure Environmental Monitoring Effort for Rocky Flats.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO, 80021; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on October 14, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–20989 Filed 10–19–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–141–000]

Crete Energy Venture, LLC; Notice of Filing

October 13, 2005.

Take notice that on September 30, 2005, Crete Energy Venture, LLC (Applicant) submitted an application pursuant to section 203 of the Federal Power Act for authorization for the disposition of jurisdictional facilities related to the internal corporate reorganization of Applicant's upstream ownership. Applicant has requested confidential treatment of Exhibit E to the Application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5789 Filed 10–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2738–054–NY]

New York State Electric & Gas Corporation; Notice of Availability of Environmental Assessment

October 6, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Saranac River Hydroelectric Project, located on the Saranac River, in Clinton County, New York, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Saranac River Project No. 2738'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Tom Dean at (202) 502–6041.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5788 Filed 10–19–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OARM–2005–0002, OARM–2005–0003; FRL–7986–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Monthly Progress Reports, EPA ICR Number 1039.11, OMB Control Number 2030–0005; and Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR Number 0246.09, OMB Control Number 2030–0016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). This is a request to renew two existing approved collections. These ICRs are scheduled to expire on March 31, 2006. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OARM–2005–0002 for Monthly Progress Reports, EPA ICR Number 1039.11, OMB Control Number 2030–0005; and docket ID number OARM–2005–0003 for Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR Number 0246.09, OMB Control Number 2030–0016, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID # No. OARM–2005–0002 for Monthly Progress Reports, or OARM–2005–0003 for Contractor Cumulative Claim and Reconciliation, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tiffany Schermerhorn, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *schermerhorn.tiffany@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established public dockets for these ICRs under Docket ID number OARM–2005–0002 for Monthly Progress Reports, EPA ICR Number 1039.11, OMB Control Number 2030–0005; and docket ID number OARM–2005–0003 for Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR Number 0246.09, OMB Control Number 2030–0016, which are available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Individual ICRS

(1) Monthly Progress Reports, EPA ICR No. 1039.11, OMB Control No. 2030–0005, expires 3/31/06.

Affected entities: Entities potentially affected by this action are those holding

cost reimbursable, time and material, labor hour, or indefinite quantity/indefinite delivery fixed rate contracts with EPA.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractor's progress under the contract. Responses to the information collection are mandatory for contractors, and are required for the contractors to receive monthly payments. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Burden Statement: EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts remain active. As such, it is estimated that each response will take approximately 36 hours. EPA anticipates that the total active affected contracts will remain approximately 324, time 12 submissions per year to yield about 3,888 annual collections. Each collection is estimated to cost $2,592 based on a variety of contractor personnel performing individual tasks required for information gathering and submission. The anticipated 3,888 annual submissions are estimated to cost $10,077,696 annually. Minimal operation and maintenance costs are expected for photocopying and postage.

(2) Contractor Cumulative Claim and Reconciliation, EPA ICR No. 0246.09, OMB Control No. 2030–0016, expires March 31, 2006.

Affected entities: Entities potentially affected by this action are those holding cost reimbursable contracts with EPA.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close out the contract. Responses to the information collection are mandatory for those contractors completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

Burden Statement: EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection request because there has been no change in the information being collected and approximately the same number of contracts are closed out each year. EPA estimates that the annual hourly burden will be 165 hours based on the following: Each response will take approximately 40 minutes, and EPA closes out approximately 247 contracts per year. The annual dollar burden is estimated at $5,404.36 based on a combination of contractor employees providing the information. The total cost of the contractor-provided information is estimated to be $21.88 for the 40 minute period. Minimal operation and maintenance costs are expected for photocopying and postage.

Dated: October 12, 2005.

Leigh Pomponio,

Manager, Policy and Oversight Service Center.

[FR Doc. 05–20980 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0043; FRL–7735–3]

Notification of Substantial Risk of Injury to Health and the Environment under TSCA Section 8(e); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment on the following Information Collection Request (ICR): Notification of Substantial Risk of Injury to Health and the Environment under Toxic Substances Control Act (TSCA) Section 8(e) (EPA ICR No. 0794.11, OMB Control No. 2070–0046). This ICR involves a collection activity that is currently approved and scheduled to expire on June 30, 2006. The information collected under this ICR relates to reporting requirements placed on persons who manufacture, import, process, or distribute in commerce chemical substances or mixtures and who obtain information that such substances or mixtures present a substantial risk of injury to health or the environment. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPPT–2005–0043, must be received on or before December 19, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Terry O'Bryan, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7656; fax number: (202) 564–1626; e-mail address: *obryan.terry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, imports, processes, or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., basic chemical manufacturing; resin, synthetic rubber and artificial and synthetic fibers and filaments manufacturing; pesticide, fertilizer, and other agricultural chemical manufacturing; paint, coating, and adhesive manufacturing; soap, cleaning compound, and toilet preparation manufacturing, etc.
- Petroleum refineries (NAICS 32411), e.g., crude oil refining, diesel

fuels manufacturing, fuel oils manufacturing, jet fuel manufacturing, kerosene manufacturing, petroleum distillation, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2005–0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0043. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail

system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0043. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Notification of Substantial Risk of Injury to Health and the Environment under TSCA Section 8(e).

ICR numbers: EPA ICR No. 0794.11, OMB Control No. 2070–0046.

ICR status: This ICR is currently scheduled to expire on June 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 8(e) of TSCA requires that any person who manufactures, imports, processes, or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to range between 5.0 hours and 27.0 hours per response, depending upon the nature of the response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Companies that manufacture, import, process, or distribute in commerce a chemical substance or mixture and which obtain information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment.

Estimated total number of potential respondents: 230.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.5.

Estimated total annual burden hours: 6,750 hours.

Estimated total annual burden costs: $364,500.

IV. Are There Changes in the Estimates from the Last Approval?

There is an increase of 319 hours (from 6,431 hours to 6,750 hours) in the total estimated respondent burden compared with that identified in the ICR most recently approved by OMB. This increase can be accounted for by a small increase in TSCA section 8(e) reporting compared to that estimated in the previous ICR. This increase is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–20981 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[IN–164–1; FRL–7986–4]

Adequacy Status of Jackson County, IN, 8-Hour Ozone Redesignation and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Jackson County, Indiana 8-hour ozone redesignation request and maintenance plan are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Jackson County can use the motor vehicle emissions budgets from the submitted 8-hour ozone redesignation request and maintenance plan for future conformity determinations. These budgets are effective November 4, 2005. The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us'' or ''our'' is used, we mean EPA.

Background: Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Indiana Department of Environmental Management on September 29, 2005, stating that the motor vehicle emissions budgets for the year 2015, submitted in the Jackson County, Indiana 8-hour ozone redesignation request and maintenance plan, are adequate. This finding has been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Dated: October 11, 2005.

Richard C. Karl,

Acting Regional Administrator, Region 5.

[FR Doc. 05–20978 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IN–163–1; FRL–7986–3]

Adequacy Status of Greene County, IN, 8-Hour Ozone Redesignation and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Greene County, Indiana 8-hour ozone redesignation request and maintenance plan are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Greene County can use the motor vehicle emissions budgets from the submitted 8-hour ozone

redesignation request and maintenance plan for future conformity determinations. These budgets are effective November 4, 2005. The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us'' or ''our'' is used, we mean EPA.

Background: Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Indiana Department of Environmental Management on September 29, 2005, stating that the motor vehicle emissions budgets for the year 2015, submitted in the Greene County, Indiana 8-hour ozone redesignation request and maintenance plan, are adequate. This finding has been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Dated: October 11, 2005.

Richard C. Karl,

Acting Regional Administrator, Region 5.

[FR Doc. 05–20979 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0101; FRL–7743–3]

Pesticide Program Dialogue Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs is inviting nominations of qualified candidates to be considered for appointment to the Pesticide Program Dialogue Committee (PPDC). EPA's current Charter for the PPDC will expire in November 2005. EPA intends to seek renewal of the PPDC Charter for another 2–year term, November 2005 to November 2007, in accordance with the Federal Advisory Committee Act.

DATES: Nominations must be e-mailed or postmarked no later than November 7, 2005.

ADDRESSES: Nominations should be e-mailed or submitted in writing to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address:*fehrenbach.margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0101. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the**''Federal Register''** listings at*http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of

those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, for a 2–year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides.

EPA is seeking to renew the current PPDC Charter, which expires in November 2005, for another 2–year term. EPA intends to appoint members to 1– or 2–year terms. An important consideration in EPA's selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: Pesticide user, grower and commodity groups; pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Potential candidates should submit the following information: Name, occupation, organization, position, address, telephone number, e-mail address, and a brief resume containing their background, experience, qualifications and other relevant information as part of the consideration process. Any interested person and/or organization may submit the name(s) of qualified persons. Please submit your information by e-mail or in writing to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Farmworker safety, Foods, Pesticides and pests, Public health, Registration.

Dated: October 17, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–21076 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7743–7]

Access to Confidential Business Information by Avanti Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Avanti Corporation, of Annandale, Virginia, and its subcontractor, Geologics Corporation of Alexandria, Virginia, access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address:*TSCA–Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number GS–10F–0308P, Avanti Corporation of 3808 Linda Lane, Annandale, Virginia; and Geologics Corporation of 5285 Shawnee Road, Suite 300, Alexandria, Virginia, will assist EPA in providing technical and administrative support for meetings related to investigation of chemicals and biotechnology products for possible regulatory or other control actions. They will also provide computer data base support related to providing information on chemical regulatory actions and related policy decisions.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS–10F–0308P, Avanti and Geologics, will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, to perform successfully the duties specified under the contract.

Avanti and Geologics personnel will be given information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA, that the Agency may provide Avanti and Geologics access to these CBI materials on a need-to-know basis only. All access

to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under Contract Number GS–10F–0308P may continue until October 31, 2010. Access will commence no sooner than October 27, 2005.

Avanti and Geologics personnel have signed non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: October 17, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–21075 Filed 10–19–05; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

Summary: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: November 16, 2005, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting will include introduction of the 2006 Sub-Saharan Africa Advisory Board members; update on AGOA; discussions of the 2005 SAAC recommendations; an update on the FY05 business development efforts in the region; and report on 2006 International Business Development strategies; and new business.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 16, 2005, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

For Further Information Contact: For further information contact Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Kamil Cook,

Deputy General Counsel (Acting).

[FR Doc. 05–20951 Filed 10–19–05; 8:45am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 13, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 19, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0962.

Title: Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-Band and the Allocation of Additional Spectrum for Broadcast Satellite Service Use.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 590 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: Annual and on occasion reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 590 hours.

Total Annual Cost: $51,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This information collection is necessary for the Commission to determine whether licensees complied with the rules applicable to satellite earth stations and to deploy new satellite systems. If the collection were not conducted, the Commission would not be able to verify whether Geostationary Satellite Orbit (GSO) fixed satellite service (FSS) earth stations in the Ka-Band were operating in accordance with the Commission's rules. Additionally, spectrum would not be used most efficiently and, therefore, would result in hindering the provision of new or enhanced telecommunications services to the public.

After the 60 day comment period has ended, the Commission will submit this information collection to OMB as an extension (no change in requirements) in order to obtain the full three-year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21000 Filed 10–19–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2005.

Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Security Bank Corporation, Macon, Georgia, to merge with Rivoli BanCorp, Inc., and thereby indirectly acquire Rivoli Bank and Trust, Macon, Georgia.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Farmers Capital Bank Corporation, Frankfort, Kentucky; to acquire 100 percent of the voting shares of Citizens Bancorp, Inc., Newport, Kentucky, and thereby indirectly acquire Citizens Bank of Northern Kentucky, Newport, Kentucky.

In connection with this application, Citizens Acquisition Subsidiary Corp., Frankfort, Kentucky has applied to become a bank holding company by by merging with Citizens Bancorp, Inc., and thereby acquire Citizens Bank of Northern Kentucky, Inc., Newport, Kentucky.

Applicants also have applied to acquire Citizens Financial Services, Newport, Kentucky and thereby engage in securities brokerage and financial planning services, pursuant to section 225.28(b)(6) and (7) of Regulation Y.

Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. New Waggoner Inc., Vernon, Texas; to become a bank holding company by acquiring 100 percent voting shares of Waggoner National Bancshares, Inc., Vernon, Texas, and indirectly acquiring and Vernon Bancshares, Inc., Wilmington, Delaware, and The Waggoner National Bank of Vernon, Vernon,Texas.

Board of Governors of the Federal Reserve System, October 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5782 Filed 10–19–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: October 21, 2005, 9 a.m.–5 p.m.

Place: Hubert H. Humphrey Building, Room 443E, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this working session will be to discuss a letter and report to the HHS Secretary on Privacy and the National Health Information Network.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Maya A. Bernstein, Lead Staff for Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, 434E Hubert H. Humphrey Building, 200 Independence Avenue, SW., 20201; telephone (202) 690–7100; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 14, 2005.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (OSDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–20991 Filed 10–19–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 10, 2005, from 9 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Victoria Ferretti-Aceto, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *ferrettiv@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code

3014512529. Please call the Information Line for up-to-date information on this meeting. When available, background materials for this meeting will be posted one business day prior to the meeting on the FDA Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Anesthetic and Life Support Drugs Advisory Committee).

Agenda: The meeting will be open to the public from 9 a.m. to 10 a.m., unless public participation does not last that long, from 10 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information.

Procedure: On November 10, 2005, from 9 a.m. to 10 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 3, 2005. Oral presentations from the public will be scheduled between approximately 9:15 a.m. to 10:15 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 3, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Presentation of Data: On November 10, 2005, from 10 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Victoria Ferretti-Aceto at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 12, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–20970 Filed 10–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0378]

International Conference on Harmonisation; Guidance on S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes a nonclinical testing strategy for assessing the potential of a test substance to delay ventricular repolarization and includes information concerning nonclinical assays and an integrated risk assessment. The guidance is intended to facilitate the nonclinical assessment of the effects of pharmaceuticals on ventricular repolarization and proarrhythmic risk.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research (CBER) Voice Information System at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: John Koerner, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5338.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of September 13, 2004 (69 FR 55163), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals.'' The notice gave interested persons an opportunity to submit comments by December 13, 2004. In response to a request for additional time to comment, FDA reopened the comment period until February 18, 2005 (70 FR 823, January 5, 2005).

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in May 2005.

The guidance provides guidance on nonclinical assessment of the effects of pharmaceuticals on ventricular repolarization and proarrhythmic risk. The guidance describes a nonclinical testing strategy for assessing the potential of a test substance to delay ventricular repolarization and includes information concerning nonclinical assays and an integrated risk assessment.

This guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: October 12, 2005.

Jeffrey Shuren,

Assisstant Commissioner for Policy.

[FR Doc. 05–20959 Filed 10–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0377]

International Conference on Harmonisation; Guidance on E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides recommendations to sponsors concerning clinical studies to assess the potential of a new drug to cause cardiac arrhythmias, focusing on the assessment of changes in the QT/QTc interval on the electrocardiogram as a predictor of risk. The guidance is intended to encourage the assessment of drug effects on the QT/QTc interval as a standard part of drug development and to encourage the early discussion of this assessment with FDA.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Douglas C. Throckmorton, Center for Drug Evaluation and Research (HFD–1), Food and Drug Administration, 5600 Fishers Lane, Rockville MD, 20857, 301–594–5400.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International

Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of September 13, 2004 (69 FR 55163), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs.'' The notice gave interested persons an opportunity to submit comments by December 13, 2004. In response to a request for additional time to comment, FDA reopened the comment period until February 18, 2005 (70 FR 823, January 5, 2005). On April 11 and 12, 2005, FDA, the Drug Information Association, and the Heart Rhythm Society cosponsored a public meeting to discuss the draft guidance. Comments received at the meeting were made available to the Efficacy Expert Working Group. After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in May 2005.

The guidance provides guidance on the design, conduct, analysis and interpretation of clinical studies to assess the potential of a new drug to cause cardiac arrhythmias, focusing on the assessment of changes in the QT/QTc interval on the electrocardiogram as a predictor of risk. The guidance is intended to encourage the assessment of drug effects on the QT/QTc interval, along with the collection of adverse cardiac events related to arrhythmias, as a standard part of drug development, and to encourage the early discussion of this assessment with the FDA. The goal of such discussions is to reach a common understanding of the effects as early in development as practical, with the goal of enhancing the efficiency of data collection later in drug development. The guidance incorporates the following changes: (1) A fuller discussion of the factors that influence the clinical assessment of drug effects on the QT interval and (2) an adjustment in the statistical analysis of QT interval data obtained as a part of early thorough QT assessment.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at anytime. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: October 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20971 Filed 10–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0362]

Draft Guidance for Industry on Recommendations for Implementing a Collection Program for Source Plasma Containing Disease-Associated and Other Immunoglobulin Antibodies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Recommendations for Implementing a Collection Program for Source Plasma Containing Disease-Associated and Other Immunoglobulin (IgG) Antibodies,'' dated October 2005. The draft guidance document is intended to assist source plasma manufacturers in submitting to FDA the appropriate information when implementing an IgG antibody collection program or when adding a new IgG antibody collection to an existing program. The draft guidance, when finalized, would supersede the draft reviewers' guide entitled ''Disease Associated Antibody Collection Program,'' dated October 1, 1995.

DATES: Submit written or electronic comments on the draft guidance by January 18, 2006 to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Recommendations for Implementing a Collection Program for Source Plasma Containing Disease-Associated and Other Immunoglobulin (IgG) Antibodies'' dated October 2005. The draft guidance, when finalized, would supersede the draft reviewers' guide, ''Disease Associated Antibody Collection Program,'' dated October 1, 1995. The document provides guidance to source plasma manufacturers in submitting the appropriate information to FDA when implementing an IgG antibody collection program or when adding a new IgG antibody collection to an existing program. The draft guidance identifies changes in collection programs that must be documented as minor changes in an annual report to FDA under § 601.12(d) (21 CFR 601.12(d)). These collection programs include disease-associated IgG

antibodies and other existing IgG antibodies. The guidance also identifies labeling changes to be submitted as a supplement for changes being effected under § 601.12(f)(2)(i)(E). The guidance neither includes recommendations related to implementing Immunoglobulin M antibody collection programs, nor does it include recommendations for donors who do not meet all donor suitability requirements under 21 CFR 640.63.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in this guidance was approved under OMB control number 0910–0338.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20958 Filed 10–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: September 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
Program-Related Convictions:		
Agopian, Ovsanna	Granada Hills, CA	10/20/2005
Altidor, Rejeanne	Elmont, NY	10/20/2005
Andino, Rosario	Miami, FL	10/20/2005
Arnold, David	Athens, PA	10/20/2005
Arthur Avenue Pharmacy	Bronx, NY	10/20/2005
Bagley, Barbara	Los Angeles, CA	10/20/2005
Barragan, Elian	Bronx, NY	10/20/2005
Barrett, Nadine	Bronx, NY	10/20/2005
Blumberg, Gary	Deerfield, FL	10/20/2005
Brailsford, Philip	Escondido, CA	10/20/2005
Brown, Roger	Trenton, NJ	10/20/2005
Burleson, Delpha	Purcell, OK	10/20/2005
Butts, Frank	Texarkana, TX	10/20/2005
Cansler, Ronnie	Los Angeles, CA	10/20/2005
Cardio Diagnostic Technology & Consultants, Inc	Westerville, OH	10/20/2005
Celestin, Andre	Elmont, NY	10/20/2005
Central Community Service, Inc	Los Angeles, CA	10/20/2005
Chaffin, Alisa	Lansing, MI	10/20/2005
Choi, Ricardo	Miami, FL	10/20/2005
Cifelli, Charles	The Villages, FL	10/20/2005
Cifelli, Darren	West Yarmouth, MA	10/20/2005
Cifelli, Karen	West Yarmouth, MA	10/20/2005
Clark, Harry	Pensacola, FL	10/20/2005
Clark, Shirley	Vallejo, CA	10/20/2005
Collins, Monique	New Orleans, LA	10/20/2005
Davidson, Lee	Los Angeles, CA	10/20/2005
Davis, James	Irving, TX	10/20/2005
Du, Danny	Wasco, CA	10/20/2005
Estevez, Maria	Coleman, FL	10/20/2005
Fabian, Misty	Timpson, TX	10/20/2005
Flanigan, George	Los Angeles, CA	10/20/2005
Flores, William	Los Angeles, CA	10/20/2005

Subject name	Address	Effective date
Forcella, Albert	Tarpon Springs, FL	10/20/2005
Foster, Adrienne	Ashtabula, OH	10/20/2005
Fraser, Shawn	Fort Dix, NJ	10/20/2005
Gallagher, Joanne	Conyngham, PA	10/20/2005
Garcia, Delvis	Hialeah, FL	10/20/2005
Ginart, Rosa	Coleman, FL	10/20/2005
Gomez, Gladis	Bronx, NY	10/20/2005
Green, Edward	Sacremento, CA	10/20/2005
Guess, Robin	Rialto, CA	10/20/2005
Hames, Charles	Seagoville, TX	10/20/2005
Harrington, Marcus	East Moline, IL	10/20/2005
Heritage Nursing Home	Athens, PA	10/20/2005
Herod, Michael	Oakdale, LA	10/20/2005
Housely, Elliot	Miami, FL	10/20/2005
Hutchinson, Tammy	Monroe, NC	10/20/2005
Idiong, Okon	Southfield, MI	10/20/2005
Ingram-Barker, Shanel	Columbus, OH	10/20/2005
Johnson, Theresa	Dayton, OH	10/20/2005
Jones, Joe	Westerville, OH	10/20/2005
Kamara, Abibatu	New Orleans, LA	10/20/2005
Kattouf, Richard	Warren, OH	10/20/2005
Kern, Sidney	San Antonio, TX	10/20/2005
Kern, Stephen	Cache, OK	10/20/2005
Kirkham, Joseph	Texarkana, TX	10/20/2005
Krasnow, Robert	Edgefield, SC	10/20/2005
Ladd, Luwinna	Camp Sherman, OR	10/20/2005
Laury, Pamela	Hamilton, OH	10/20/2005
Lee-Perez, Shirley	Valley Stream, NY	10/20/2005
Levesque, Ann	Fresno, CA	10/20/2005
Marks, Craig	Miami, FL	10/20/2005
Martin, Ellis	Columbus, OH	10/20/2005
McLaughlin, Phillip	Benton, AR	10/20/2005
Mignott, Mark	Miami, FL	10/20/2005
Miranda, Tammy	Basalt, CO	10/20/2005
Murphy, James	Texarkana, TX	10/20/2005
Musch, Karen	Carrollton, TX	10/20/2005
Oke, Isaac	Bedford, OH	10/20/2005
Olwar, Julia	Richmond, VA	10/20/2005
Optimal Services, Inc	The Villages, FL	10/20/2005
Osborne, Diana	Ada, OK	10/20/2005
Pearce, Rebecca	Kalamazoo, MI	10/20/2005
Perrault, Mark	Los Angeles, CA	10/20/2005
Perry, Tracy	Columbus, OH	10/20/2005
Psaila, Justin	Nanuet, NY	10/20/2005
Reece, Henry	Humble, TX	10/20/2005
Richard, Jessie	Vallejo, CA	10/20/2005
Rivera, Ivette	Shirley, NY	10/20/2005
Rosenberg, Jordan	Lompoc, CA	10/20/2005
Sanchez De Varona, Raul	Miami, FL	9/28/2005
Schering Sales Corporation	Kenilworth, NJ	10/20/2005
Self Discovery, Inc	Lanett, AL	10/20/2005
Shah, Suvarna	Westport, CT	10/20/2005
Sriram, Krishnaswami	Lake Forest, IL	10/20/2005
Stilwell, Jill	Hamilton, MO	10/20/2005
Strasek, Frank	Rocky River, OH	10/20/2005
Tackett, Sharessa	Byron, MI	10/20/2005
Tatman, Lisa	Bremen, OH	10/20/2005
Triana, Nicholas	Miami, FL	10/20/2005
Veksler, Polina	Staten Island, NY	10/20/2005
Versteeg, Julie	Salt Lake City, UT	10/20/2005
Vogt, Tamara	Walker, IA	10/20/2005
Ward, Iris	Dayton, OH	10/20/2005
White, Richard	Oakdale, LA	10/20/2005
Wulfekuhle, Jennifer	Manchester, IA	10/20/2005
Zagerman Enterprises, Inc	Clawson, MI	10/20/2005
Felony Conviction for Health Care Fraud:		
Boyd, Sherrie	Columbus, OH	10/20/2005
Brown, Frisella	St Louis, MO	10/20/2005
Douglas, Juliette	Imperial, MO	10/20/2005
Fisher, Brenda	Winslow, ME	10/20/2005
Flounders, Joseph	Villas, NJ	10/20/2005
Frahmand, Zalmai	Cape Coral, FL	10/20/2005
France, Kristine	Delaware, OH	10/20/2005
Gandhi, Hiren	Edison, NJ	10/20/2005

Subject name	Address	Effective date
Gilford, Tywana	Houston, TX	10/20/2005
Horvath, Allan	Hilliard, OH	10/20/2005
Jackson, Alice	St Louis, MO	10/20/2005
Kaploe, Mark	Farmington Hills, MI	10/20/2005
King, Maxine	Milwaukee, WI	10/20/2005
Kiruki, Daniel	Lunenburg, ME	10/20/2005
Maitland, Treaka	Kissimmee, FL	10/20/2005
Mills, Brenda	Creve Coeur, MO	10/20/2005
Moore, Stacia	Kalispell, MT	10/20/2005
Morgan, Deidre	Akron, OH	10/20/2005
Nureldin, Wayel	Kansas City, KS	10/20/2005
Paas, Raymond	Forest Hills, NY	10/20/2005
Paddock, Lisa	Bowdoin, ME	10/20/2005
Payne, Kimberly	Huntingburg, IN	10/20/2005
Perez, Eloy	Miami, FL	10/20/2005
Rosselit, James	Tipp City, OH	10/20/2005
Stacy, Mitzi	Portland, OR	10/20/2005
Taylor, Jackilynn	Albany, LA	10/20/2005
Trego, Anita	Maple Shade, NJ	10/20/2005
Vann, Mary	Coeur D'Alene, ID	10/20/2005
Witte, Rebecca	Tullahoma, TN	10/20/2005
Felony Control Substance Conviction:		
Autrey, Kathleen	Evansville, IN	10/20/2005
Benjamin, Debra	Hurley, WI	10/20/2005
Davis, Dora	Westminster, CO	10/20/2005
Deleon, Alfonso	Von Ormy, TX	10/20/2005
Jones, Diane	Ft Lauderdale, FL	10/20/2005
Karnabi, Marwan	Brooklyn, NY	10/20/2005
Lipsh, Jeannette	Walhalla, ND	10/20/2005
Mindell, Kimberly	Ypsilanti, MI	10/20/2005
Moore, Clayton	St Louis, MO	10/20/2005
Phillips, Stacy	Harrisonville, MO	10/20/2005
Rafle, Philip	Anaheim, CA	10/20/2005
Serrano, Leann	Creve Coeur, IL	10/20/2005
Storey, James	Tennessee Colony, TX	10/20/2005
True, Jennifer	Grass Valley, CA	10/20/2005
Ward, Lisa	Mentor, OH	10/20/2005
Williamson, Julie	Jackson, TN	10/20/2005
Wool, Jeffrey	Joplin, MO	10/20/2005
Wright, Angel	Parkland, FL	10/20/2005
Patient Abuse/Neglect Convictions:		
Alston, Cheryl	Deer Park, NY	10/20/2005
Anderton, Eun	Madison, WI	10/20/2005
Bell, Lesa	Oklahoma City, OK	10/20/2005
Berkeley, Linda	Chelsea, VT	10/20/2005
Bushey, Andrea	Enid, OK	10/20/2005
Cockerham, Alicia	Winnfield, LA	10/20/2005
Corcoran, Philip	Eagle Point, OR	10/20/2005
Craig, Kathy	Cabot, AR	10/20/2005
Dearborn, James	Bangor, ME	10/20/2005
Edwards, Michael	Sonyea, NY	10/20/2005
Fisher, Wanda	Southshore, KY	10/20/2005
Fuller, Richard	Toledo, OH	10/20/2005
Grimes, Lathell	Ocala, FL	10/20/2005
Halifax Convalescent Center	Daytona Beach, FL	10/20/2005
Hall, Colleen	Poway, CA	10/20/2005
Hepburn, Caiphia	Bronx, NY	10/20/2005
Holliman, Charmaine	Baton Rouge, LA	10/20/2005
Jackson, Lalia	Ponca City, OK	10/20/2005
Jackson, Theresa	Jessup, MD	10/20/2005
Joondeph, Marc	Covington, WA	10/20/2005
Maes, Ernest	Canon City, CO	10/20/2005
McAlister, Shannon	Margate, FL	10/20/2005
Mitchell, Johnny	Racine, WI	10/20/2005
Pompey, Selma	Arverne, NY	10/20/2005
Raulerson, Max	Saint George, GA	10/20/2005
Robinson, Verna	Oklahoma City, OK	10/20/2005
Smith, Marilyn	Cincinnati, OH	10/20/2005
Smith, Ruby	Rush Springs, OK	10/20/2005
Spaeth, Raenita	Van Wert, OH	10/20/2005
Taylor, Michelle	Riverhead, NY	10/20/2005
Valle, Luis	Grand Rapids, MI	10/20/2005
Van Loo, Robert	Watertown, WI	10/20/2005
Voeks, Randall	Plymouth, MN	10/20/2005

Subject name	Address	Effective date
Woodley, Madeline	New Orleans, LA	10/20/2005
Conviction for Health Care Fraud:		
Gilmore, Anntinia	Rialto, CA	10/20/2005
Guthrie, Sara	Kalamazoo, MI	10/20/2005
Hicks, Louise	San Andreas, CA	10/20/2005
Hidalgo, Amber	Oklahoma City, OK	10/20/2005
McWhinney, Susan	Barre, VT	10/20/2005
Silverstein, Michael	Westport, CT	10/20/2005
Conviction—Obstruction of an Investigation:		
Hames, David	Dallas, TX	10/20/2005
Controlled Substance Convictions:		
Tabor, Diane	Fairfield, OH	10/20/2005
License Revocation/Suspension/Surrendered:		
Agundez, Raul	Harbor City, CA	10/20/2005
Almeida, Carlos	Timonium, MD	10/20/2005
Amezcua, Guadalupe	Hawaiian Gardens, CA	10/20/2005
Amsellem, David	Goldsboro, NC	10/20/2005
Ashcraft, Cherryanna	Aurora, CO	10/20/2005
Ayres, Diane	Port St Lucie, FL	10/20/2005
Balfany, Amy	Phoenix, AZ	10/20/2005
Barnes, Peggy	Middlesboro, KY	10/20/2005
Batch, Jeanne	Brownington, VT	10/20/2005
Baum, Alan	Vernon, NY	10/20/2005
Bearden, James	Mobile, AL	10/20/2005
Bischoff, James	Boulder, MT	10/20/2005
Bolick, Charles	Winter Haven, FL	10/20/2005
Booth, Ryan	Colorado Springs, CO	10/20/2005
Buchbinder, Jay	Merrick, NY	10/20/2005
Burrow, Roy	Elizabethton, TN	10/20/2005
Bushor, Sherry	Crawfordsville, IN	10/20/2005
Caswell, Jeanne	Port Orange, FL	10/20/2005
Catania, Linda	Maynard, MA	10/20/2005
Chaix, Michael	Pineville, LA	10/20/2005
Chaleki, Lisa-Jayne	Pittsfield, MA	10/20/2005
Childress, Kelley	Ashland, MA	10/20/2005
Choate, Donald	Lufkin, TX	10/20/2005
Cobbs, Jerdonald	Escondido, CA	10/20/2005
Coles, Philip	Flagstaff, AZ	10/20/2005
Comptom, Cynthia	Memphis, TN	10/20/2005
Corbett, David	Sturgis, KY	10/20/2005
Craig, Jaclyn	Fredonia, NY	10/20/2005
Crawford, Diana	Mobile, AL	10/20/2005
Cresap, Kristina	Grenada, MS	10/20/2005
Crutchley, Valerie	Melfa, VA	10/20/2005
Culler, Frederick	Nevada, MO	10/20/2005
Curtis, Kim	Provo, UT	10/20/2005
D'Orlando, Robert	Revere, MA	10/20/2005
Degryse, Doreen	Port Charlotte, FL	10/20/2005
Dephillipo, Deborah	Aldan, PA	10/20/2005
Dexter, Sarah	Portland, OR	10/20/2005
Dickey, Douglas	Victoria, TX	10/20/2005
Difiore, Stacy	Portland, ME	10/20/2005
Dorsen, Peter	Minneapolis, MN	10/20/2005
Dufur, Amy	Aurora, IL	10/20/2005
Duke, Mary	Potomac, MD	10/20/2005
Duncan, Steven	Stockton, CA	10/20/2005
Elder, Vicki	Moreno Valley, CA	10/20/2005
Elfring, Katie	Ellisville, MS	10/20/2005
Fanin, Cecile	Greenbrier, AR	10/20/2005
Ferguson, Daniel	College Place, WA	10/20/2005
Foley, Frank	Pittsfield, MA	10/20/2005
Ford, Barbie	Pompano Beach, FL	10/20/2005
Forster, Mark	Carefree, AZ	10/20/2005
Franks, Daryl	Union, KY	10/20/2005
Freeman, David	Lynchburg, VA	10/20/2005
Gamal-Eldin, Carolyn	Augusta, ME	10/20/2005
Garcia, Christina	Tucson, AZ	10/20/2005
Garry, Alex	Jamestown, CA	10/20/2005
Geraci, Theresa	Wappingers Falls, NY	10/20/2005
Gibbs, Lori	Winslow, ME	10/20/2005
Giza, Tammy	Coeburn, VA	10/20/2005
Glorius, David	Ft McCoy, FL	10/20/2005
Gluzman, Alexander	North Hills, CA	10/20/2005
Grube, Stephanie	Apple Valley, CA	10/20/2005

Subject name	Address	Effective date
Guardipee, Stephen	Roanoke, VA	10/20/2005
Hannon, Ronald	Columbia Falls, MT	10/20/2005
Haskins, Megan	Rutland, VT	10/20/2005
Headrick, Diane	Greensburg, PA	10/20/2005
Hendry, Troy	Vossburg, MS	10/20/2005
Hoda, Syed	Canton, MI	10/20/2005
Hoffman, Dawn	Rochester, NY	10/20/2005
Hogan, Jeanne	South Boston, MA	10/20/2005
Holbrook, William	Harrisville, UT	10/20/2005
Holmes, Starle	Inglewood, CA	10/20/2005
Hoppes, Mildred	Waterloo, IA	10/20/2005
Horrell, Crystal	North Hollywood, CA	10/20/2005
Hubler, Deborah	Stoughton, MA	10/20/2005
Huntington, William	Bowdoinham, ME	10/20/2005
Jacks, Brian	Danville, VA	10/20/2005
Johnson, Deborah	Pine Bluff, AR	10/20/2005
Jones, Sarah	Danville, VA	10/20/2005
Jorgensen, Eric	St Joseph, MO	10/20/2005
Juckett, Rebecca	Granville, NY	10/20/2005
Juhl, Virginia	Sierra Vista, AZ	10/20/2005
Katzman, Jerry	Sackett Harbor, NY	10/20/2005
Kelley, Patricia	Cambridge, OH	10/20/2005
Khan, Shahnaz	Hayward, CA	10/20/2005
King, Michael	Manteca, CA	10/20/2005
Klosterman, Jessica	Sarasota, FL	10/20/2005
Klyszeiko, Maribeth	Essex Junction, VT	10/20/2005
Krueger, Kerry	Blue Jay, CA	10/20/2005
LaBelle, Jessica	Concord, NH	10/20/2005
Ledbetter, Randall	Belleville, IL	10/20/2005
Lemons, Warren	Houston, TX	10/20/2005
Leonard, Vicki	Clinton, IA	10/20/2005
Leroux, Jeffrey	Richmond, CA	10/20/2005
Livingston, Deitra	Hopkinsville, KY	10/20/2005
Locke, Charles	Governeur, NJ	10/20/2005
Maddox, James	Wetumpka, AL	10/20/2005
Manikis, Charlene	Escondido, CA	10/20/2005
Martin-Szymanski, Misty	Ft Smith, AR	10/20/2005
Masters, John	Loxahatchee, FL	10/20/2005
McEvilly-McDonald, Patricia	Trabuco Canyon, CA	10/20/2005
McGrath, Helen	Kendall Park, NJ	10/20/2005
McKay, Gertrude	Ft Lauderdale, FL	10/20/2005
Mead, Janice	Casa Grande, AZ	10/20/2005
Merrell, Hassie	Monteagle, TN	10/20/2005
Merrill, David	Northglenn, CO	10/20/2005
Metzger, Carl	Cape Elizabeth, ME	10/20/2005
Miller, Alvin	Westville, IN	10/20/2005
Miller, Gari	Calhoun, IL	10/20/2005
Miller, Janet	Sequim, WA	10/20/2005
Millette, Michael	Crystal Lake, IL	10/20/2005
Mitchell, Charlene	Midvale, UT	10/20/2005
Mulford, Robert	Grand Jct, CO	10/20/2005
Mullins, Donna	Dante, VA	10/20/2005
Munn, Karl	Kalamazoo, MI	10/20/2005
Munson, Michelle	Mohnton, PA	10/20/2005
Muwonge, Lamech	Phoenix, AZ	10/20/2005
Myerchin, Leigh	Springfield, MO	10/20/2005
Nave, Sherry	Long Beach, CA	10/20/2005
Neunhoffer, Steven	Canyon Country, CA	10/20/2005
Nubel, Aviva	Bridgewater, NJ	10/20/2005
Nunes, Nikki	Fall River, MA	10/20/2005
Overmyer, Patti	Vernon, TX	10/20/2005
Parr, Connie	Auburn, IN	10/20/2005
Perez, Maria	Royal Palm Beach, FL	10/20/2005
Pope, Rosemary	Dallas, TX	10/20/2005
Pratt, Jay	Bingham, ME	10/20/2005
Prechel, Melanie	Columbus, OH	10/20/2005
Preston, Ashley	Wolcott, VT	10/20/2005
Provost, Tammy	Waterbury, VT	10/20/2005
Pruitt, Julianne	Council Bluffs, IA	10/20/2005
Pulley, Matthew	Brewer, ME	10/20/2005
Quach, Larry	Salt Lake City, UT	10/20/2005
Rainey, Debra	Hanna, WY	10/20/2005
Raykin, Shawna	Denver, CO	10/20/2005
Redenius, Myron	Billings, MT	10/20/2005

Subject name	Address	Effective date
Regan, William	Yuma, AZ	10/20/2005
Rhodes, Hershel	Nacogdoches, TX	10/20/2005
Riem, David	Hernando, MS	10/20/2005
Robertson, Angela	Manchester, NH	10/20/2005
Robinson, Kelli	Meridian, MS	10/20/2005
Rodriguez, Helen	Chula Vista, CA	10/20/2005
Rose, Timothy	Wallingford, KY	10/20/2005
Rosenbaum, Nancy	Phoenix, AZ	10/20/2005
Ross, Melinda	Grundy, VA	10/20/2005
Ross, Willie	Oakland, CA	10/20/2005
Royer, Rita	Irasburg, VT	10/20/2005
Russell, Scott	Cedaredge, CO	10/20/2005
Sanders, Audrey	Bessemer, AL	10/20/2005
Schnebly, Anna	Lafayette, CO	10/20/2005
Schoelman, Helen	Missouri City, TX	10/20/2005
Scinta, Amy	McLean, VA	10/20/2005
Scotney, Sylvia	Tempe, AZ	10/20/2005
Seaberry, Lorraine	Cottonport, LA	10/20/2005
Sharp, Deborah	West Paducah, KY	10/20/2005
Sheldon, Patrick	South Bend, IN	10/20/2005
Short, Carrie	Whiteville, NC	10/20/2005
Simon, Joseph	Zephyr Cove, NV	10/20/2005
Simonetti, Dino	Salem, MA	10/20/2005
Skatrud, Cynthia	Greenwood, IN	10/20/2005
Snapp, Malissa	Mohawk, TN	10/20/2005
Stanton, Jamie	Rawlins, WY	10/20/2005
Staples, Kimberly	Forestville, CA	10/20/2005
Stepp, Mervin	Airway Heights, WA	10/20/2005
Stevens, Ronald	Stow, OH	10/20/2005
Sullivan, Jessica	Hurley, VA	10/20/2005
Sullivan, Soundra	Saint Augustine, FL	10/20/2005
Szarszewski, Mark	Edison, NJ	10/20/2005
Taylor, Teresa	Colorado Springs, CO	10/20/2005
Taylor, Wanda	Amory, MS	10/20/2005
Thompson, Nancy	Kalispell, MT	10/20/2005
Thompson, Tracy	Mesa, AZ	10/20/2005
Tompkins, Lauren	Baltimore, MD	10/20/2005
Trumbo, Sally	Louisville, KY	10/20/2005
Tvedt, Jacqueline	Montour, IA	10/20/2005
Valestin, Terry	Cape Coral, FL	10/20/2005
Vaughan, Milton	Henderson, NV	10/20/2005
Veliz, Frank	Kincheloe, MI	10/20/2005
Vick, Mary	Yuma, CO	10/20/2005
Waller, Shirley	Brandon, MS	10/20/2005
Wang, Hugh	Concord, CA	10/20/2005
Watson, Tracey	Newark, NJ	10/20/2005
Weikle, Timothy	Roanoke, VA	10/20/2005
Wethington, Kelly	Lutz, FL	10/20/2005
White, Windy	Hayden, AL	10/20/2005
Wilcox, John	Puyallup, WA	10/20/2005
Wilson, Brandon	Wilton, NY	10/20/2005
Witt, Wendy	Bedford, VA	10/20/2005
Woolley, Robert	St Paul, MN	10/20/2005
Wright, Gidget	Sunbright, TN	10/20/2005
Wright, Judie	Tipiersville, MS	10/20/2005
Wright, Martha	Hidalgo, TX	10/20/2005
Ybarra, Martin	Mesa, AZ	10/20/2005
Young, Richard	Wickenburg, AZ	10/20/2005
Zoll, Tara	Crestview, FL	10/20/2005
Zumbrunnen, Shirley	Monticello, IA	10/20/2005
Fraud/Kickbacks/Prohibited Acts/Settlement Agreements:		
Dick, Darnell	Yakima, WA	6/15/2005
Mack, Lynn	Chardon, OH	4/21/2005
Naples, James	Texarkana, TX	12/22/2004
Wiggins, Kenneth	Hartford, KY	6/15/2005
Owned/Controlled by Convicted Entities:		
Community Health Clinic, Inc	Isola, MS	10/20/2005
Helping Hands Transportation, Inc	Jacksonville, OH	10/20/2005
Rent-A-Nurse	New Iberia, LA	10/20/2005
W Marion Medical Center, Inc	Ocala, FL	10/20/2005
Default on Heal Loan:		
Antelman, Goldie	Philadelphia, PA	10/20/2005
Cox, Michael	El Sobrante, CA	10/20/2005
Green, Gregory	Florissant, MO	9/19/2005

Subject name	Address	Effective date
Howard-Love, Kimberly	Springfield, OH	10/20/2005
Marder, Charles	Plano, TX	10/20/2005
Mikolinnas, Thomas	Worcester, MA	9/22/2005
Slusher, Kevin	Shreveport, LA	10/20/2005
Zimmerman, Seth	Port Washington, NY	10/20/2005

Dated: October 6, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05–20963 Filed 10–19–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

N- and 2-Substituted Benztropine Compounds and Use Thereof for Treating Mental Disorders

Amy H. Newman et al. (NIDA)

U.S. Provisional Application filed 24 Aug 2005 (HHS Reference No. E–234–2005/0–US–01).

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Dopamine is a neurotransmitter that exerts important effects on locomotor activity, motivation and reward, and cognition. The dopamine transporter (DAT) is expressed on the plasma membrane of dopamine synthesizing neurons. It is responsible for clearing dopamine released into the extracellular space, thereby regulating neurotransmission. The dopamine transporter plays a significant role in neurotoxicity and human diseases, such as Parkinson's disease, drug abuse (especially cocaine addiction), Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD), and a number of other CNS disorders. Therefore, the dopamine transporter is a strong target for research and the discovery of potential therapeutics for the treatment of these indications.

Benztropine and its analogs bind with high affinity to the DAT and inhibit dopamine reuptake, but generally do not produce behavioral effects comparable to those produced by cocaine. Recent benztropine analogs have been shown to (1) reduce cocaine-induced stimulant effects, (2) retain long-lasting actions, and (3) lack significant abuse liability. These data suggest that this class of compounds may be useful medications for human diseases where dopamine-related behavior is compromised, especially in situations in which an agonist treatment is indicated.

Although the benztropines bind with high affinity to the DAT without substitution in the 2-position of the tropane ring, only a substituent in the S-configuration is tolerated at DAT, in direct contrast to cocaine and its analogs that must have the 2-position substituent in the R-configuration. In this invention, substitution at the S-2-position of 4′,4″-difluoro-or 4′,4″-dichlorobenztropines with various functional groups such as alkyl, aryl, akyl, alcohol, ether, etc., as well as substitution at the tropane nitrogen were achieved and have demonstrated high affinity and selectivity for the DAT over the other monoamine transporters as well as muscarinic receptors, without a significant cocaine-like behavioral profile.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Novobiocin Analogues as Anticancer Agents

Leonard M. Neckers (NCI) et al.

U.S. Provisional Application No. 60/624,566 filed 03 Nov 2004 (HHS Reference No. E–065–2005/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

Functional Hsp90 requires C-terminal homodimerization of two molecules of Hsp90. Novobiocin competes with ATP for binding to the C-terminus and studies demonstrated that this binding results in degradation of Hsp90 protein through ubiquitination and ultimately transportation to proteosome for proteolysis. Twenty three analogs of novobiocin were prepared and screened for their activity against Hsp90 and the most active derivatives were identified. Novobiocin was previously identified as an inhibitor of type II topoisomerases and has been used clinically for more than a decade for the treatment of cancer. However recent studies have shown that novobiocin selectively inhibits the maturation of Hsp90 dependent proteins. In addition to its effect on Hsp90, novobiocin has been shown to reverse drug resistance and increase the intracellular concentration of topoisomerase II drugs such as Etoposide and tubulin binding drugs, such as Taxol, making cells more susceptible to chemotherapeutics and induction of apoptosis.

This research is described, in part, in: Yu XM, Shen G, Neckers L, Blake H, Holzbeierlein J, Cronk B and Blagg BSJ. ''Hsp90 Inhibitors Identified from a Library of Novobiocin Analogues,'' J. Am. Chem. Soc., in press.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Anticancer Effects of Novel Vitamin D Receptor Antagonists

Julianna Barsony (NIDDK)

U.S. Provisional Application No. 60/300,409 filed 22 Jun 2001 (HHS Reference No. E–213–2001/1–US–01).

PCT Patent Application No. PCT/US02/19774 filed 20 Jun 2002 (HHS Reference No. E–213–2001/2–PCT–01).

U.S. Patent Application No. 10/481,052 filed 16 Dec 2003 (HHS Reference No. E–213–2001/2–US–02).

Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

The present invention relates to cancer therapeutics. Specifically, this invention relates to novel selective vitamin D receptor modulators (SEDM), also known as vitamin D receptor antagonists. Methods of treatment resulting in inhibition of cell growth, inducement of cell differentiation, inhibition of breast cancer growth, and inhibition of parathyroid hormone secretion in mice are disclosed.

Vitamin D does not have significant biological activity. Rather, it must be metabolized within the body to its hormonally active form, calcitriol. Calcitriol acts through the vitamin D receptor (VDR) to regulate important functions, such as calcium homeostasis, cell proliferation and differentiation, and immune functions. Many cancers contain VDR and, therefore respond to calcitriol. In such cancers, low concentrations of calcitriol stimulate growth and high concentrations inhibit growth. High doses of calcitriol and calcitriol analogues, however, cause hypercalcemia, limiting the use of this hormone for cancer treatment.

The present invention relates to derivatives of calcitriol that have been synthesized in a manner similar to the principles developed to create estrogen receptor modulators (SERM). These vitamin D receptor modulators bind well to VDR, inhibit their ability to stimulate cancer cell growth and increase their ability to induce cell differentiation. In mice, SEDM inhibited human breast cancer growth without causing hypercalcemia. The technology disclosed herein may also be used for the prevention of breast cancer, treatment and/or prevention of other types of conditions or diseases, such as, but not limited to, prostate, colorectal, and lung cancers, leukemia, primary or metastatic melanoma, glyoma, and parathyroid diseases.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Zebularine, A Stable and Orally Active Inhibitor of Cytosine DNA Methyltransferase Capable of Reactivating Dormant Tumor Suppressor and Inhibiting Tumor Growth

Victor E. Marquez (NCI) et al.

U.S. Provisional Application No. 60/309,242 filed 31 Jul 2001 (HHS Ref. No. E–081–2001/0–US–01).

U.S. Provisional Application No. 60/311,435 filed 10 Aug 2001 (HHS Ref. No. E–081–2001/1–US–01).

PCT Application No. PCT/US02/24223 filed 30 Jul 2002, which published as WO 03/012051 on 13 Feb 2003 (HHS Ref. No. E–081–2001/2–PCT–01).

U.S. Patent Application No. 10/485,438 filed 30 Jan 2004 (HHS Ref. No. E–081–2001/2–US–06).

Licensing Contact: John Stansberry; 301/435–5239; *stansbej@mail.nih.gov.*

DNA methyltransferases (also referred to as DNA methylases) transfer methyl groups from the universal methyl donor S-adenosyl methionine to specific sites on a DNA molecule. When gene sequences contain many methylated cytosines, they are less likely to be expressed. Several such 'silenced' genes are now known to be an important contributing factor in many cancers where expression of tumor suppressor genes has been suppressed. Preventing DNA methyltransferase production, or inhibiting the enzyme, may allow tumor suppressor genes that have been silenced by hypermethylation to be re-activated. Re-activation of tumor suppressor genes is intended to stop or slow tumor growth by restoring growth control mechanisms. Thus, there exists a need for an effective and stable inhibitor of DNA methylation.

The inventors have discovered a potent inhibitor of DNA methylation (Zebularine) that can specifically reactivate silenced tumor suppressor genes. This agent can be used to inhibit methylation and thereby combat certain cancers that have been linked to hypermethylation. This agent has also been shown in initial animal testing to be active orally and is more stable than some other agents in this same area of therapy and is a suitable candidate for further pre-clinical and clinical development as an anti-cancer agent to be used as monotherapy and/or as an adjunct to existing anti-cancer therapeutics.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Compositions and Methods of Specifically Targeting Tumors

Dr. Raj K. Puri (FDA) et al.

U.S. Patent No. 6,428,788 issued 06 Aug 2002 (HHS Reference No. E–266–1994/1–US–01).

Licensing Contact: Jesse S. Kindra; 301/594–4697; *kindraj@mail.nih.gov.*

A chimeric molecule that binds specifically to IL–13 receptors has been identified. The molecule, IL13-PE38QQR, targets tumor cells with less binding to healthy cells. The improved specific targeting of this molecule is premised upon the discovery that tumor cells overexpress IL–13 receptors at extremely high levels and that binding of IL–13–PE38QQR can be blocked to IL–4 receptors in normal cells. This phenomenon permits the use of lower dosages of chimeric molecules along with IL–4 receptor blocker to deliver effector molecules to targeted tumor cells.

This invention may be useful in the treatment of cancer. The targeting method could be used in conjunction with current methods, *e.g.*, chemotherapy to help maintain the healthy cells. To date, IL13–PE38QQR has been shown to be effective against a variety of solid tumor cancers in animal models including adenocarcinoma, brain cancer and AIDS associated Kaposi's sarcoma.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

1,2-Dihydroellipticines with Activity Against CNS-Specific Cancer Cell Lines

Rudiger D. Haugwitz (NCI) et al.

U.S. Patent No. 5,272,146 issued 21 Dec 1993 (HHS Reference No. E–110–1992/0–US–01).

U.S. Patent No. 5,441,941 issued 15 Aug 1995 (HHS Reference No. E–110–1992/0–US–02).

Licensing Contact: George G. Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The present invention is directed, in general, to methods for treating human cancers and in particular to new compounds which cross the blood brain barrier and retain activity against CNS specific cancer cell lines, to pharmaceutical formulations containing such compounds, and to methods for the treatment of cancer.

This research is described, in part, in Jurayj *et al.*, ''Design and Synthesis of Ellipticinium Salts and 1,2-Dihydroellipticines with High Selectivities against Human CNS

Cancers in vitro,'' J. Med. Chem. 37(4):2190–2197, 1994.

Dated: October 10, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–21010 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Conference Grants (R13s)

Date: November 8–9, 2005.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Deborah P. Beebe, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 1700, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.937, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21020 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Research Project (Cooperative Agreement) Applications

Date: November 15, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301/435–0303, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Research Project Grant Applications (R01s)

Date: November 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, PhD, MD, Scientific Review Administrator, Division of Extramural Affairs, Review Branch, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20814, 301/435–0275, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21022 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group.Heart, Lung, and Blood Program Project Review Committee.

Date: December 1, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute/NIH, 6701 Rockledge Drive, RM 7208, Bethesda, MD 20892, (301) 435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21024 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Transplantation of Hepatic Cells.

Date: November 16, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Clinical Grants in Digestive Diseases and Nutrition.

Date: December 7, 2005.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21021 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: November 9, 2005.

Time: 8 a.m. to 3:30 p.m.

Agenda: Topics proposed for discussion: (1) Activities and recent initiatives; (2) progress of the Senator Paul Wellstone Muscular Dystrophy Cooperative Research Centers; (3) recommendations of the MDCC Scientific Working Group; (4) efforts for translational research in muscular dystrophy; and (5) advances in the rare/understudied muscular dystrophies.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015, (202) 362–9300.

Contact Person: John D. Porter, PhD, Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2172, Bethesda, MD 20892, (301) 496–1917, *porterjo@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the MDCC Web site: *http://www.ninds.nih.gov/research/muscular_dystrophy/coordinating_committee*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 11, 2005.

Anthony M. Coehlo, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21023 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS)

Time and Date: November 16, 2005, 9 a.m.–3:30 p.m. November 17, 2005, 10 a.m.–2 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates and status reports from the Department on various topics including activities of the HHS Data Council, and updates on HIPAA implementation including data standards, the E-Prescribing Final Rule, Privacy Rule compliance, an the Notice of Proposed Rulemaking for health claims attachments. They will also hear an update on activities of the Office of the National Coordinator for Health Information Technology. In the afternoon the Committee will be updated on the status of activities being conducted by the Subcommittee on Privacy and Confidentiality on the National health Information Network, and hear a presentation on secondary uses of clinical data.

On the morning of the second day the Committee will hear a presentation on health statistics and the national health information infrastructure and a discussion of data release and confidentiality issues led by a representative of the National Center for Health Statistics' Board of Scientific Counselors. In the afternoon, there will be reports from the Subcommittees and a discussion of agendas for future Committee meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 14, 2005.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (OSDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–20990 Filed 10–19–05; 8:45am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) (40 FR 22859, May 27, 1975, as amended most recently at 69 FR 64081, November 3, 2004, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the consolidation of acquisitions activities at the National Institutes of Health (NIH). This change is designed to strengthen NIH's administrative structure in order to meet the goals and mission of NIH. The proposed reorganization is consistent with the agreement reached between HHS and NIH on consolidation of the acquisitions function.

Section N–B, Organization and Functions, under the heading National Cancer Institute (NC, formerly HNC), Office of the Director, Office of Management, is amended as follows:

Office of Acquisitions (NC17B, formerly HNC17B). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer institutes and centers (IC). (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Treatment and Biology Sciences Branch (NC17B2, formerly HNC17B2). (1) Participates in planning research/research support contract programs for the Division of Cancer Treatment and Diagnosis, the Division of Cancer Biology, and the Center for Cancer Research; (2) advertises proposed acquisitions; (3) assists in reviewing contract proposals submitted in response to Requests for Proposals (RFPs); (4) negotiates and makes contract awards; and (5) manages post-award business aspects of contracts, and assists Project Officers in managing scientific aspects of those contracts.

Purchasing and Support Acquisition Branch (NC17B3, formerly HNC17B3). (1) Participates in the planning for non-research acquisitions for the NCI; (2) advertises, solicits proposals, assists in review, negotiations, and in making awards; (3) manages all business related aspects of the awards during the post-award phase, and assists Project Officers as necessary in their oversight and management of those awards.

Prevention, Control, and Population Sciences Branch (NC17B4, formerly HNC17B4). (1) Participates in planning research/research support contract programs for the Division of Cancer Prevention and the Division of Cancer Control and Population Sciences; (2) advertises proposed acquisitions; (3) assists in reviewing contract proposals submitted in response to Requests for Proposals (RFPs); (4) negotiates and makes contract awards; and (5) manages post-award business aspects of contracts, and assists Project Officers in managing scientific aspects of those contracts.

Epidemiology and Support Branch (NC17B5, formerly HNC17B5). (1) Participates in planning research/research support contract programs for the Division of Cancer Epidemiology and Genetics and the Office of the Director, NCI; (2) advertises proposed acquisitions; (3) assists in reviewing contract proposals submitted in response to Requests for Proposals (RFPs); (4) negotiates and makes contract awards; and (5) manages post-award business aspects of contracts, and assists Project Officers in managing scientific aspects of those contracts.

FCRDC Management Operations and Support Branch (NC17B6, formerly HNC17B6). (1) Participates in planning the research and research support contract programs for the National Cancer Institute—Frederick Cancer Research and Development Center (NCI–FCRDC; also, Center); (2) directs the administrative and business operations of the Center; (3) administers a system of research contracts for the management and operation of the Center; (4) develops acquisition plans and conducts recompetitions, evaluations, and awards of the contracts that support the operation of the Center; (5) manages the utilization of space, the maintenance of all buildings and grounds, and the use and provision of other resources and services needed by the research programs at the FCRDC; and, (6) assists the Office of the Director, NCI, in managing the scientific aspects of those contracts.

Section N–B, Organization and Functions, under the heading National Heart, Lung, and Blood Institute (NH, formerly HNH), Division of Extramural Affairs, is amended as follows:

Office of Acquisitions (NH54, formerly HNH54). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Heart, Lung, and Vascular Diseases Branch (NH542, formerly HNH542). (1) Plans, manages and carries out research and development contracting activities in support of the National Heart, Lung, and Blood Institute (NHLBI) and its Customer ICs' scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other Branches within the NHLBI Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Blood Diseases and Resources/NIAMS Branch (NH544, formerly HNH544). (1) Plans, manages and carries out research and development contracting activities in support of the NHLBI and its Customer ICs' scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and

internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other Branches within the NHLBI Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Epidemiology and Clinical Applications/WHI Branch (NH545, formerly HNH545). (1) Plans, manages and carries out research and development contracting activities in support of the NHLBI and its Customer ICs' scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other Branches within the NHLBI Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Procurement Branch (NH546, formerly HNH546). (1) Plans, manages and carries out simplified acquisitions and station support contracting activities to support the NHLBI and its Customer ICs' scientific missions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other Branches within the NHLBI Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Section N–B, Organization and Functions, under the heading National Institute of Allergy and Infectious Diseases (NM, formerly HNM), Division of Extramural Activities, is amended as follows:

Office of Acquisitions (NM74, formerly HNM74). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Acquisition Policy and Evaluation Branch (NM742, formerly HNM742). (1) Is responsible for the interpretation, development, implementation, and evaluation of Federal policies, standards, and procedures pertaining to research and development contracting operations that support the National Institute of Allergy and Infectious Diseases (NIAID) mission; (2) provides business management services, legal advice, and interpretation for OA staff and NIAID senior management officials; and (3) provides internal controls, reviews OA staff work products, and develops best practices and supporting tools for OA and scientific program staff.

Program Management and Operations Branch (NM748, formerly HNM748). (1) Coordinates all OA operating and management activities; (2) ensures that the policies, procedures, and processes developed by the Acquisition Policy and Evaluation Branch are implemented consistently throughout the OA; (3) develops, deploys, and coordinates the use and management of electronic information systems utilized by OA staff in the execution of eCommerce activities; evaluates best practices, and develops reporting tools for use in monitoring the operation of the OA; (4) is responsible for all administrative functions of the OA including personnel recruitment, training, and allocation of resources; and (5) is responsible for all contract closeout activities.

AIDS Research Contracts Branch (NM749, formerly HNM749). (1) Develops innovative solutions for the planning and formulation of biomedical and behavioral research and development initiatives providing complex support services, clinical trials, and advanced product development contracts supporting the scientific mission of the NIAID; (2) identifies and implements best practices to negotiate, coordinate, monitor, and administer contracts from cradle to grave; and (3) provides business management services to scientific division clients and assists Project Officers in the monitoring of technical performance of contracts.

Microbiology and Infectious Diseases Research Contracts Branch A (NM74A, formerly HNM74A). (1) Develops innovative solutions for the planning and formulation of biomedical and behavioral research and development initiatives providing complex support services, clinical trials, and advanced product development contracts supporting the scientific mission of the NIAID; (2) identifies and implements best practices to negotiate, coordinate, monitor, and administer contracts from inception to completion; and (3) provides business management services to scientific division clients and assists Project Officers in the monitoring of technical performance of contracts.

Microbiology and Infectious Diseases Research Contracts Branch B (NM74B, formerly HNM74B). (1) Develops innovative solutions for the planning and formulation of biomedical and behavioral research and development initiatives providing complex support services, clinical trials, and advanced product development contracts supporting the scientific mission of the NIAID; (2) identifies and implements best practices to negotiate, coordinate, monitor, and administer contracts from inception to completion; and (3) provides business management services to scientific division clients and assists Project Officers in the monitoring of technical performance of contracts.

Allergy, Immunology, and Transplantation Research Contracts Branch (NM74C, formerly HNM74C). (1) Develops innovative solutions for the planning and formulation of biomedical and behavioral research and development initiatives providing complex support services, clinical trials, and advanced product development contracts supporting the scientific mission of the NIAID; (2) identifies and implements best practices to negotiate, coordinate, monitor, and administer contracts from inception to completion; and (3) provides business management services to scientific division clients and assists Project Officers in the monitoring of technical performance of contracts.

Acquisition Management and Operations Branch (NM74D, formerly HNM74D). (1) Develops innovative solutions for the planning and formulation of station support contracts, and all simplified acquisition procedures supporting the scientific mission of the Division of Intramural Research and Office of the Director, NIAID; (2) identifies and implements best practices to negotiate, award, monitor and administer all business aspects of procurements for support services, equipment, and supplies; and

(3) develops guidelines, procedures, and internal controls to implement Federal procurement policy related to small purchases and delegated procurement.

Section N–B, Organization and Functions, under the heading National Institute of Diabetes and Digestive and Kidney Diseases (NK, formerly HNK), Division of Extramural Activities, is amended as follows:

Office of Acquisitions (NK7–6, formerly HNK7–6). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

NIDDK Research and Development Contracts Management Branch (NK7–62, formerly HNK7–62). (1) Plans, manages and carries out research and development contracting activities in support of the scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Station Support Branch (NK7–63, formerly HNK7–63). (1) Plans, manages and carries out simplified acquisitions and station support contracting activities to support the scientific missions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

NIAAA Research and Development Contracts Management Branch (NK7–64, formerly HNK7–64). (1) Plans, manages and carries out research and development contracting activities in support of the scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

NICHD Research and Development Contracts Management Branch (NK7–65, formerly HNK7–65). (1) Plans, manages and carries out research and development contracting activities in support of the scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Section N–B, Organization and Functions, under the heading National Institute on Drug Abuse (N6, formerly HN6), Office of the Director, is amended as follows:

Office of Acquisitions (N616, formerly HN616). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Research and Development Contracts Management Branch A (N6162, formerly HN6162). (1) Plans, manages and carries out research and development contracting activities in support of the neurosciences scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Neurosciences Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Research and Development Contracts Management Branch B (N6163, formerly HN6163). (1) Plans, manages and carries out research and development contracting activities in support of the neurosciences scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Neurosciences Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Research and Development Contracts Management Branch C (N6164, formerly HN6164). (1) Plans, manages and carries out research and development contracting activities in support of the neurosciences scientific missions, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and

regulations; (4) coordinates with other branches within the Neurosciences Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Consolidated Station Support/ Simplified Acquisitions Branch (N6165, formerly HN6165). (1) Plans, manages and carries out simplified acquisitions and station support contracting activities to support the neurosciences scientific missions; (2) works with program staff and provides advice and guidance to support their research activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the Neurosciences Office of Acquisitions and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Section N–B, Organization and Functions, under the heading National Institute of Environmental Health Sciences (NV, formerly HNV), Office of the Director, Office of Management, is amended as follows:

Office of Acquisitions (NV126, formerly HNV126). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Section N–B, Organization and Functions, under the heading National Library of Medicine (NL, formerly HNL), Office of the Director, Office of Administration, is amended as follows:

Office of Acquisitions (NL123, formerly HNL123). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Contracts Branch 1 (NL1232, formerly HNL1232). (1) Plans, manages and carries out research and development contracting and consolidated station support/simplified acquisitions activities in support of the NLM missions and client service centers, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the NLM Office of Acquisitions Management and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Contracts Branch 2 (NL1233, formerly HNL1233). (1) Plans, manages and carries out research and development contracting and consolidated station support/simplified acquisitions activities in support of the NLM missions and client service centers, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the NLM Office of Acquisitions Management and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Contracts Branch 3 (NL1234, formerly HNL1234). (1) Plans, manages and carries out research and development contracting and consolidated station support/simplified acquisitions activities in support of the NLM missions and client service centers, including the solicitation, negotiation, coordination, awarding, and monitoring of all actions; (2) works with program staff and provides advice and guidance to support their activities in the most effective and efficient manner; (3) develops guidelines, procedures, and internal controls to ensure proper and continuing implementation of NIH and other applicable policies, laws and regulations; (4) coordinates with other branches within the NLM Office of Acquisitions Management and elsewhere at NIH to develop new approaches and identify and implement best practices; and (5) provides liaison support and representation to the greater NIH acquisition community.

Section N–B, Organization and Functions, under the heading National Library of Medicine (NL, formerly HNL), Office of the Director, Office of Office of the Chief Operating Officer, is amended as follows:

Office of Acquisitions (NJ126, formerly HNJ126). (1) Directs a centralized hospital contracting operation serving all departments of the Clinical Center; (2) provides advice and assistance to the management of all departments on procurement planning with responsibility for solicitation, evaluation, negotiation and award, contract administration, and contract closeout; and (3) is responsible for implementing Federal, Departmental, NIH, and local procurement laws, regulations, policies, and procedures in the accomplishment of the Clinical Center's procurement support activity.

Contracts Branch 1 (NJ1262, formerly HNJ1262). (1) Directs a centralized contracting branch serving various departments of the Clinical Center; (2) provides advice and assistance to the management of those departments on acquisition planning with responsibility for solicitation, evaluation, negotiation, award, contract administration, and contract closeout, and (3) is responsible for implementing Federal, Departmental, NIH and local acquisition laws, regulations, policies and procedures in the accomplishment of the Clinical Center's acquisition support activity.

Contracts Branch 2 (NJ1263, formerly HNJ1263). (1) Directs a centralized contracting branch serving various departments of the Clinical Center; (2) provides advice and assistance to the management of those departments on acquisition planning with responsibility for solicitation, evaluation, negotiation, award, contract administration, and contract closeout, and (3) is responsible for implementing Federal, Departmental, NIH and local acquisition laws, regulations, policies and procedures in the accomplishment of the Clinical Center's acquisition support activity.

Contracts Branch 3 (NJ1264, formerly HNJ1264). (1) Directs a centralized contracting branch serving various departments of the Clinical Center; (2) provides advice and assistance to the management of those departments on acquisition planning with responsibility for solicitation, evaluation, negotiation, award, contract administration, and contract closeout, and (3) is responsible for implementing Federal, Departmental, NIH and local acquisition laws, regulations, policies and procedures in the accomplishment of the Clinical Center's acquisition support activity.

Contracts Branch 4 (NJ1265, formerly HNJ1265). (1) Directs a centralized contracting branch serving various departments of the Clinical Center; (2) provides advice and assistance to the management of those departments on acquisition planning with responsibility for solicitation, evaluation, negotiation, award, contract administration, and contract closeout, and (3) is responsible for implementing Federal, Departmental, NIH and local acquisition laws, regulations, policies and procedures in the accomplishment of the Clinical Center's acquisition support activity.

Section N–B, Organization and Functions, under the heading Office of the Director (NA, formerly HNA), Office of Management, Office of Administration, Office of Logistics and Acquisition Operations, is amended as follows:

Office of Acquisitions (NAM278, formerly HNAM278). (1) Manages and conducts a comprehensive program of all research and development contracting, non-research and development contracting, station support contracting, commercial item acquisitions using simplified acquisition procedures, GSA Federal Supply Schedule acquisitions and simplified acquisitions for customer ICs. (2) Provides advice and assistance regarding all phases of the acquisition cycle from planning to closeout with the purpose of accomplishing all acquisitions needed for the scientific mission and all related acquisitions required by its customers.

Section N–B, Organization and Functions, under the heading Office of the Director (NA, formerly HNA), Office of Management, Office of Research Facilities Development and Operations, is amended as follows:

Office of Acquisitions (NAM95, formerly HNAM95). (1) Is the principal advisor to the NIH and expert on regulations, policies, procedures, and processes related to procurement of facilities operations, maintenance, and disaster relief; (2) leads and manages the NIH acquisition program for facilities maintenance, operations, and disaster relief services from acquisition through negotiation and contract award to contract closeout using the variety of contract instruments allowed under the FAR, HSAR and GSAM and other contract policies; (3) manages the evaluation of offers including the orchestration of the technical review; and (4) monitors and evaluates contract performance; negotiates and executes contract changes, resolves post-award issues, and terminates contracts, as appropriate. Provides advice, assistance and training in the areas of facilities maintenance, operations, and disaster relief contracting to NIH project officers and NIH institute, center, and office customers.

Real Estate Contracting Branch (NAM952, formerly HNAM952). (1) Is the principle advisor to the NIH on real property inventory strategies and market conditions and acquisition regulations, policies, procedures, and processes, related to leased property; (2) leads and manages the NIH real estate acquisition and accession activities from acquisition planning through negotiation and contract award to contract closeout using the variety of contract instruments allowed under the FAR, HSAR and GSAM; (3) manages the evaluation of offers including the orchestration of the technical review; (4) monitors and evaluates contract performance; negotiates and executes contract changes, resolves post-award issues, and terminates contracts, as appropriate; (5) prepares and processes real property purchase contracts, leases, and related legal documents through the DHHS Office of General Counsel; (6) prepares all documents and coordinates real property transfer and disposal actions through the U. S. General Services Administration; (7) manages and maintains lease files; and (8) is the NIH principal contracting area for all real property transactions.

Architecture, Engineering and Construction Contracting Branch (NAM953, formerly HNAM953). (1) Is the principal advisor to the NIH and expert on regulations, policies, procedures, and processes related to procurement of architecture, engineering, construction management, construction and building trade services; (2) leads and manages the NIH acquisition program for architecture, engineering and construction services from acquisition through negotiation and contract award to contract closeout using the variety of contract instruments allowed under the FAR, HSAR and GSAM and other contract policies; (3) manages the evaluation of offers including the orchestration of the technical review; (4) monitors and evaluates contract performance; negotiates and executes contract changes, resolves post-award issues, and terminates contracts, as appropriate; (5) provides advice, assistance and training in the areas of design and construction contracting to NIH project officers and NIH institute, center, and office customers; and (6) is NIH principal contracting area for all architecture and engineering and construction contracting.

Facilities Support Services Contracting Branch (NAM954, formerly HNAM954). (1) Is the principal advisor to the NIH and expert on regulations, policies, procedures, and processes related to procurement of facilities operations, maintenance, and disaster relief; (2) leads and manages the NIH acquisition program for facilities maintenance, operations, disaster relief and other related services and studies impacting NIH real property performance, functionality and appearance from acquisition through negotiation and contract award to contract closeout using the variety of contract instruments allowed under the FAR, HSAR and GSAM and other contract policies; (3) manages the evaluation of offers including the orchestration of the technical review; (4) monitors and evaluates contract performance; negotiates and executes contract changes, resolves post-award issues, and terminates contracts as appropriate; (5) provides advice, assistance and training in the areas of facilities maintenance, operations, and disaster relief contracting to NIH project officers and NIH Institute, Center, and Office customers; and (6) is NIH principal contracting area for facilities services and related contracting.

Delegations of Authority: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this amendment and are consistent with this amendment shall continue in effect, pending further redelegation.

Dated: September 29, 2005.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–21009 Filed 10–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–22611]

Neptune LNG, L.L.C., Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce that the Coast Guard intends to prepare an environmental impact statement (EIS) as part of the environmental review of this license application. The application describes a project that would be located in the Federal waters of the Outer Continental Shelf in Blocks NK 19–04 6525 and NK 19–04 6575, approximately 22 miles northeast of Boston, Massachusetts, and approximately 7 miles south-southeast of Gloucester, Massachusetts. Publication of this notice begins a scoping process that will help identify and determine the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process and provides information on how to participate.

DATES: A public meeting will be held in Boston, MA on November 2, 2005. There will also be a public meeting in Gloucester, MA on November 3, 2005. Both meetings will be from 6 p.m. to 8 p.m. and will be preceded by an informational open house from 4:30 p.m. to 6 p.m. The public meetings may end later than the stated time, depending on the number of persons wishing to speak.

A portion of the public meeting will be conducted by the Massachusetts Executive Office of Environmental Affairs in compliance with the Massachusetts Environmental Policy Act. That meeting will be noticed separately in the Massachusetts Journal.

Material submitted in response to the request for comments for the scoping process must reach the Docket Management Facility by November 18, 2005.

ADDRESSES: The public meeting in Boston will be held at: Faneuil Hall in Boston, MA–1 Faneuil Hall Square, 2nd floor meeting hall, Phone: (617) 635–3105. The public meeting in Gloucester will be at: Gloucester High School, Auditorium, 32 L.O. Johnson Rd, Gloucester, MA, Phone: (978) 281–9870.

Address docket submissions for USCG–2005–22611 to: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Roddy Bachman, U.S. Coast Guard, telephone: 202–267–1752, e-mail: *rbachman@comdt.uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on environmental issues related to the proposed deepwater port. Your comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS.

In order to allow everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Docket Management Facility's Docket Management System (DMS). See ''Request for Comments'' for information about DMS and your rights under the Privacy Act.

All our public meeting locations are wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public meeting is not the only opportunity you have to comment. In addition to or in place of attending a meeting, you can submit comments to the Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2005–22611.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (*see* **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for a liquefied natural gas (LNG) deepwater port appears at 70 FR 58729, October 7, 2005. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's natural and human environmental impacts. The Coast Guard is the lead agency for determining the scope of this review, and in this case the Coast Guard has determined that review must include preparation of an EIS. This notice of intent is required by 40 CFR 1508.22, and briefly describes the proposed action and possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process, or the EIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when the Coast Guard has completed the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing EIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identifies other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the Coast Guard will prepare a draft EIS, and we will publish a **Federal Register** notice announcing its public availability. (If you want that notice to be sent to you, please contact the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.) You will have an opportunity to review and comment on the draft EIS. The Coast Guard will consider those comments and then prepare the final EIS. As with the draft EIS, we will announce the availability of the final EIS and once again give you an opportunity for review and comment.

Summary of the Application

Neptune LNG, L.L.C. proposes to construct, own and operate a deepwater port, named Neptune, in the Federal waters of the Outer Continental Shelf on blocks NK 19–04 6525 and NK 19–04 6575, approximately 22 miles northeast of Boston, Massachusetts, and approximately 7 miles south-southeast of Gloucester, Massachusetts, in a water depth of approximately 250 feet. The Neptune deepwater port would be capable of mooring up to two approximately 140,000 cubic meter capacity LNG carriers by means of a submerged unloading buoy system.

The LNG carriers, or shuttle regasification vessels (SRVs), would be equipped to store, transport and vaporize LNG, and to odorize and meter natural gas which would then be sent out by conventional subsea pipelines. Each SRV would have insulated storage tanks located within its hull. Each tank would be equipped with an in-tank pump to circulate and transfer LNG to the vaporization facilities located on the deck of the SRV. The proposed vaporization system would be closed-loop water-glycol, re-circulating heat exchangers heated by steam from boil-off gas/vaporized LNG-fired boilers.

The major fixed components of the proposed deepwater port would be an unloading buoy system, eight mooring lines consisting of wire rope and chain connecting to anchor points on the seabed, eight suction pile anchor points, approximately 2.5 miles of natural gas flow line with flexible pipe risers and risers manifolds, and approximately 11 miles of 24-inch natural gas transmission line with a hot tap and transition manifold to connect to the existing Algonquin Hubline$_{SM}$.

Neptune would have an average throughput capacity of 400 million standard cubic feet per day (MMscfd) and a peak capacity of approximately 750 MMscfd. Natural gas would be sent out by means of two flexible risers and a subsea flowline leading to a 24-inch gas transmission line. These risers and flow line would connect the deepwater port to the existing 30-inch Algonquin Hubline^{SM}. No onshore components or storage facilities are associated with the proposed deepwater port application.

Construction of the deepwater port components would be expected to take 36 months, with a startup of commercial operations in late 2009. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 20 years.

In addition, pipelines within the three-mile limit require an Army Corps of Engineers (USACE) permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Structures such as the moorings and lateral pipelines beyond the three-mile limit require a Section 10 permit.

As required by their regulations, the USACE will maintain a permit file. The USACE New England District phone number is 978–318–8338 and their Web site is *http://www.nae.usace.army.mil*. The new pipeline will be included in the National Environmental Policy Act (NEPA) review as part of the deepwater port application process. The USACE, as a cooperating agency, will assist in the NEPA process as described in 40 CFR 1501.6; will be participating in the scoping meetings; and will conduct joint public meetings with the Coast Guard and MARAD when the draft EIS is released for public comment. Comments sent to the USACE will also be incorporated into the DOT docket and EIS to ensure consistency with the NEPA Process.

Dated: October 13, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 05–21007 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22702]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated

equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, November 12, 2005, from 1 p.m. to 5 p.m., on Monday, November 14, 2005, from 1:30 p.m. to 4:30 p.m., and on Tuesday, November 15, 2005, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, November 13, 2005, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, November 13, 2005, from 1:30 p.m. to 5 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on Monday, November 14, 2005, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, November 13, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Tuesday, October 25, 2005. Requests to have a copy of your material distributed to each member of the committee or subcommittees in advance of the meeting should reach the Coast Guard on or before Tuesday, October 25, 2005.

ADDRESSES: NBSAC will meet at the Crowne Plaza, 1480 Jefferson Davis Highway, Arlington, VA 22202. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Ms. Jeanne Timmons, Executive Director of NBSAC, Commandant (G–OPB–1), telephone 202–267–1077, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web site for the Office of Boating Safety at URL address *www.uscgboating.org*.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Timmons, Executive Director of NBSAC, telephone 202–267–1077, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Rear Admiral Gary T. Blore, Director of Operations Policy and Council Sponsor.
(2) Swearing in of recent appointees (includes new members and continued members).
(2) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.
(3) Executive Director's report.
(4) Chairman's session.
(5) Report from TSAC Liaison.
(6) Report from NAVSAC Liaison.
(7) Coast Guard Auxiliary report.
(8) National Association of State Boating Law Administrators Report.
(9) Wallop Breaux reauthorization update.
(10) National Transportation Safety Board report.
(11) Update on Personal Flotation Devices (PFDs) on the market for children, including Swimsuit Style
(12) Prevention Through People Subcommittee report.
(13) Boats and Associated Equipment Subcommittee report.
(14) Recreational Boating Safety Strategic Planning Subcommittee report.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current projects and new issues impacting prevention through people.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current projects and new issues impacting boats and associated equipment.

Recreational Boating Safety Strategic Planning Subcommittee. The agenda includes the following: Discuss current projects and new issues impacting Recreational Boating Safety Strategic Planning.

Procedural

All meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director of your request no later than Tuesday, October 25, 2005. Written material for distribution at a meeting should reach the Coast Guard no later than Tuesday, October 25, 2005. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Tuesday, October 25, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: October 14, 2005.

James M. Hass,

Captain, U.S. Coast Guard, Acting Director of Operations Policy.

[FR Doc. 05–21008 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Amendment of an Incidental Take Permit and the 1997 Habitat Conservation Plan for Kern County Waste Facilities, Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare, in coordination with the Kern County Waste Management Department (KCWMD), a joint Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the Amendment to the Kern County Waste Facilities Habitat Conservation Plan and permit number 830963 (Amendment 1). Amendment 1 is being prepared under Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, (ESA). Amendment 1 addresses potential take of threatened and endangered species at Kern County waste facilities due to the proposed expansion of the permit area, new covered activities, and an increase in the number of species covered by Permit 830963. The term of Permit 830963 shall remain at 50 years, expiring in 2047. KCWMD intends to request an ESA permit amendment for 5 species federally listed as threatened or endangered and 14 unlisted species that may become listed during the term of the permit.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues to be included in the EIS/EIR. Written comments will be accepted at the public meeting. In addition, you may submit

written comments by mail or facsimile transmission.

DATES: Two public meetings will be held on: Wednesday, November 9, 2005 from 6 p.m. to 8 p.m. and Thursday, November 10, 2005 from 6 p.m. to 8 p.m. Written comments should be received on or before November 21, 2005.

ADDRESSES: The public meetings will be held at the following locations: Wednesday, November 9, 2005 at 2700 ''M'' Street, First Floor Conference Room, Bakersfield, CA 93301; and, Thursday, November 10, 2005 at the Mojave Veterans Building, 15580 ''O'' Street, Mojave, CA 93501. Written comments, or questions related to the preparation of the EIS/EIR and NEPA process should be submitted to Lori Rinek, Division Chief, Endangered Species Program, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, or Lori Rinek, Division Chief, Endangered Species Program, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Lori Rinek as soon as possible (see **FOR FURTHER INFORMATION CONTACT**). In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Under limited circumstances, the Service may issue permits to authorize incidental take of listed fish or wildlife; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Although take of listed plant species is not prohibited under the ESA, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included on an incidental take permit would receive assurances under the Services ''No Surprises'' regulation [50 CFR 17.22(b)(5) and 17.32(b)(5)].

Permit number 830963 (issued October 24, 1997) provides for incidental take of 5 federally-listed threatened or endangered animals: San Joaquin kit fox (*Vulpes macrotis mutica*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat, (*Dipodomys ingens*), blunt-nosed leopard lizard (*Gambelia silus*), desert tortoise (*Gopherus agassizii*); one plant, the Hoover's eriastrum (*Eriastrum hooverii*); and, one unlisted animal, the San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), should it be listed during the 50-year term of the permit. Incidental take was permitted at 17 KCWMD facilities, including active and closed sanitary landfills and solid waste transfer stations. The total permit area was 2,063 acres, of which 1,151 acres of habitat were expected to be impacted. Activities covered by the original permit included excavation and on-going operation of sanitary landfills, which included activities that would result in: inadvertent burial during waste handling; species contact with potentially toxic materials, such as contact with contaminant-laden surface and subsurface leachates from in-place refuse and exposure to toxic gas emissions from in-place refuse; traffic, noise, lights, and other disturbance; and exposures to substantially elevated bacterial levels in decomposing refuse. In addition, potential for habitat loss and direct take of individuals at solid waste transfer stations was addressed.

Amendment 1 to permit number 830963 is needed because: (a) KCWMD has been given responsibility for remediating numerous historical ''burn dumps'' that were capped and abandoned several decades ago and must now be brought up to current regulatory standards; (b) KCWMD must acquire and manage large buffer zones around existing and new facilities; (c) KCWMD must expand facility capacity in some areas; and (d) there is a reasonable likelihood that additional species may be listed in the foreseeable future and would need to be addressed. Under Amendment 1, KCWMD proposes to add approximately 10,500 to 11,000 acres to the existing 2,063-acre permit area.

KCWMD is not requesting coverage for Hoover's eriastrum under Amendment 1 as it has been delisted. However, KCWMD is still required to perform all of its obligations to protect and conserve Hoover's eriastrum as described in the original permit. Under Amendment 1, KCWD proposes to extend the geographic scope and scope of permitted activities for the remaining 5 species covered by the original permit. Under Amendment 1, KCWMD also requests coverage for 13 additional species that may be listed in the future: Le Conte's thrasher (Toxostoma lecontei lecontei), short-nosed kangaroo rat (Dipodomys nitratoides *brevinasus*), San Joaquin pocket mouse (*Perognathus inornatus*), Mohave ground squirrel (*Spermophilis mohavensis*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), western burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), California horned lizard (*Phrynosoma frontalis coronata*), Bakersfield smallscale (*Atriplex tularensis*), lesser saltscale (*Atriplex minuscule*), Lost Hills saltbush (*Atriplex vallicola*), heartscale (*Atriplex cordulata*), and desert cymopterus (*Cymopterus deserticola*). Species may be added or deleted during the course of the development of the Amendment 1 proposal based on further analysis, new information, agency consultation, and public comment.

Under Amendment 1, KCWMD proposes to include up to 13,000 non-contiguous acres at numerous locations in Kern County, including the 2,063 acres covered by the original permit. The boundaries of the Amendment 1 area are generally defined as the area of KCWMD's 11 active and retired waste facilities, transfer stations, and burn dumps, including a 660 to 1320-foot buffer zone around these facilities. The proposed Amendment 1 area also includes a number of small (1 to 40-acre) historical burn dumps which KCWMD is remediating and maintaining to meet current health and safety standards.

Amendment 1 would address the following proposed covered activities: (a) Potential expansion of necessary facilities including transfer stations, landfills, and buffer zones; (b) construction of roads, drainage facilities, monitoring wells, temporary and permanent soil stockpiles, facilities for management of landfill gas, recycling facilities, waste transfer facilities, fences, and other operational facilities within the active and inactive

landfill area and buffer zones; (c) long-term operation of waste facilities, followed by closure of those facilities and long-term post-closure maintenance of surrounding buffer areas; (d) remediation of burn dumps, primarily by re-capping and fencing; (e) monitoring, maintenance of facilities, management of dust and runoff, management of wind-blown trash, and other routine maintenance and management in buffer zones; and (f) the potential development of compatible facilities in buffer zones and remediated burn dumps (such as recycling or waste processing facilities, or other types of facilities compatible with the operation and zoning of sanitary landfills, transfer stations, and burn dumps). No new landfills would be sited.

The effects of proposed covered activities are expected to be minimized and mitigated through participation in a conservation program that would be fully described in Amendment 1 to the original Habitat Conservation Plan. The focus of this proposed conservation program is to provide long-term protection of covered species by protecting biological communities in areas of high ecological value within Kern County. Components of the proposed conservation program are now under consideration by the Service and KCWMD. These components will likely include: avoidance and minimization measures, monitoring, adaptive management, and mitigation measures consisting of preservation, restoration and enhancement of habitat.

Environmental Impact Statement/ Report

KCWMD and the Service have selected Jud Monroe, Environmental Planning and Documentation (Monroe), to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although Monroe will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for NEPA purposes, and KCWMD will be responsible for the scope and content of the document for CEQA purposes.

The EIS/EIR will consider the proposed action of amending permit number 830963, no action (no permit amendment), and a reasonable range of alternatives, including operational alternatives for KCWMD facilities that would involve different levels of incidental take from those likely to occur under the proposed action. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources, water resources, economics, and other environmental resources that could occur directly or indirectly with implementation of the proposed action or alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures, where feasible, to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. We are publishing this notice in accordance with Section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. More specifically, we provide this notice: (1) To describe the proposed action and possible alternatives; (2) to advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) to announce the initiation of a public scoping period; and (4) to obtain suggestions and information on the scope of issues to be included in the EIS/EIR. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. We invite written comments from interested parties to ensure that the full range of issues related to the permit request is identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: October 14, 2005.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–20967 Filed 10–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PI–020H; G–06–0004]

Notice of Public Meetings, Steens Mountain Advisory Council

AGENCY: Department of the Interior, Bureau of Land Management, Burns District Office.

ACTION: Notice of public meetings for the Steens Mountain Advisory Council.

SUMMARY: In accordance with the Steens Mountain Cooperative Management and Protection Act of 2000, the Federal Land Policy and Management Act of 1976, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, and the Steens Mountain Advisory Council will meet as indicated below.

DATES: The Steens Mountain Advisory Council will meet at the Bureau of Land Management, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738 on October 27 and 28, 2005, and December 8 and 9, 2005. Meetings will begin at 8 a.m., local time, each day and will end at approximately 4:30 p.m., local time.

SUPPLEMENTARY INFORMATION: The Steens Mountain Advisory Council was appointed by the Secretary of the Interior on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act and rechartered in August 2005. The Steens Mountain Advisory Council's purpose is to provide representative counsel and advice to the Bureau of Land Management regarding (1) new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area, (2) cooperative programs and incentives for landscape management that meet human needs, maintain and improve the ecological and economic integrity of the area, and (3) preparation and implementation of a management plan for the Steens Mountain Cooperative Management and Protection Area.

Topics to be discussed at these meetings include operating protocols, vice-chair election, Transportation/ Travel Plan, North Steens Ecosystem Restoration Project Environmental Impact Statement, Wildland Juniper Management Area, cooperative management agreements, implementation plan, on-the-ground projects update, monitoring, nondevelopment easements, and other matters that may reasonably come before the Steens Mountain Advisory Council.

The Steens Mountain Advisory Council meetings are open to the public. Information to be distributed to the Steens Mountain Advisory Council is requested prior to the start of each meeting. Public comment periods will be scheduled for 11 a.m. to 11:30 a.m., local time, each day. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all persons.

Under the Federal Advisory Committee Act management regulations (41 CFR 102–3.15(b)), in exceptional circumstances an agency may give less than 15 days notice of committee meeting notices published in the **Federal Register**. In this case, this notice is being published less than 15 days prior to the meeting due to the urgent need to meet deadlines to complete the Steens Mountain Cooperative Management and Protection Area Travel Plan (due December 2005) and the North Steens Ecosystem Restoration Project Environmental Impact Statement and to avoid additional delays.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Steens Mountain Advisory Council may be obtained from Rhonda Karges, Management Support Specialist, Bureau of Land Management Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738. Information can also be obtained by phone at (541) 573–4400 or e-mail *Rhonda_Karges@blm.gov.*

Dated: October 13, 2005.

Karla Bird,

Designated Federal Official, Andrews Resource Area Field Manager.

[FR Doc. 05–20995 Filed 10–19–05; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–457–A–D (Second Review)]

Heavy Forged Hand Tools From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on heavy forged hand tools from China.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on heavy forged hand tools from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 4, 2005.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 38101, July 1, 2005) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on December 5, 2005, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before December 8, 2005 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by December 8, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the reviews period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: October 17, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20975 Filed 10–19–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by domestic producer Ames True Temper to be adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Second Review)]

Paper Clips from China

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on paper clips from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 4, 2005.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 38202, July 1, 2005) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 9, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 14, 2005 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 14, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 14, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20977 Filed 10–19–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by ACCO Brands USA, LLC, and Officemate International Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–509]

In the Matter of Certain Personal Computers, Server Computers, and Components Thereof; Notice of Commission Decision To Review an Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930; Request for Written Submissions on the Issues Under Review, and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the presiding administrative law judge's (''ALJ'') initial determination (''ID'') in the above-captioned investigation finding a violation of section 337 of the Tariff Act of 1930. Notice is also hereby given that the Commission is requesting briefing on the issues under review, and on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its

Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on June 7, 2004, based on a complaint filed by Hewlett-Packard Development Company, L.P. of Houston, Texas and Hewlett-Packard Company of Palo Alto, California (collectively ''HP''). 69 FR 31844 (June 7, 2004). The complainants alleged violations of section 337 in the importation and sale of certain personal computers, server computers, and components thereof, by reason of infringement of seven U.S. patents. The complainants named Gateway, Inc. of Poway, California (Gateway) as the only respondent. Claim 1 of U.S. Patent No. 5,737,604, claims 1, 3, 4, 6–8, 18, 20, 21, 23–25, 35, 37, 38, and 40–42 of U.S. Patent No. 6,138,184 (''the '184 patent''), claim 9 of U.S. Patent No. 5,892,976 (''the '976 patent''), and claim 1 of U.S. Patent No. 6,085,318 (''the '318 patent'') remain at issue in this investigation.

On May 24, 2005, the ALJ issued an ID (Order No. 45) extending the target date of the investigation by three months or until December 8, 2005. No party petitioned for review of the ID. The Commission has determined not to review this ID.

On August 8, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The final ID incorporates by reference Order No. 15 setting forth the applicable construction of the claim terms at issue in this investigation. The ALJ found a violation of section 337 by reason of infringement of claims 7, 24, and 41 of the '184 patent and claim 9 of the '976 patent. The ALJ did not find a violation of section 337 with respect to the other two patents. Petitions for review were filed by HP, Gateway, and the Commission investigative attorney (IA) on August 18, 2005.

On August 23, 2005, the Commission issued a notice indicating that it had determined to extend the deadline for determining whether to review the final ID by 14 days, *i.e.*, from September 22, 2005, until October 6, 2005. On August 25, 2005, all parties filed responses to the petitions. On October 6, 2005, the Commission issued a notice indicating that it had determined to extend the deadline for determining whether to review the final ID by 8 days, *i.e.*, from October 6, 2005, until October 14, 2005.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety. In connection with its review, the Commission requests briefing limited to the following questions:

(1) With respect to the ALJ's infringement finding regarding the '184 and '976 patents, the extent to which installation of parallel port driver software is required to enable DMA-controlled transfers to the parallel port, and the implications for infringement analysis and for the technical prong of the domestic industry requirement;

(2) With respect to the ALJ's infringement finding regarding claim 1 of the '318 patent, whether use of an El Torito CD–ROM is required for the accused devices to meet the limitations of claim 1 of the '318 patent, and the implications for infringement analysis and for the technical prong of the domestic industry requirement;

(3) Whether there is a factual or legal distinction, for purposes of infringement analysis, between the installation of software in relation to the parallel output port limitation of the '184 and '976 patents and the use of an El Torito CD–ROM in relation to the boot memory limitation of claim 1 of the '318 patent; and

(4) Whether the holdings of *Jazz Photo Corp* v. *International Trade Commission,* 264 F.3d 1094, 1105 (Fed. Cir. 2001), and *Fuji Photo Film Co. Ltd.* v. *Jazz Photo Corp.,* 394 F.3d 1368, 1376 (Fed. Cir 2005), concerning the first sale doctrine and patent exhaustion, control where the patents at issue are the subject of worldwide licenses, unlike the situation in the *Jazz* and *Fuji* cases.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: Submissions should be concise and thoroughly referenced to the record in this investigation. The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues under review and the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the expiration date of the '184 and '976 patents and the HTSUS numbers under which the infringing products are imported. The main written submissions and proposed remedial orders must be filed no later than close of business on October 24, 2005. Response submissions must be filed no later than close of business on October 31, 2005. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to

submit a document (or portions thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.5. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and §§ 210.42, 210.43, and 210.50 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.42, 210.43, and 210.50).

Issued: October 14, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–20976 Filed 10–19–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 013–2005]

Privacy Act of 1974, Systems of Records

AGENCY: Environment and Natural Resources Division, DOJ.

ACTION: Notice of modifications to systems of records.

SUMMARY: Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Environment and National Resources Division (ENRD), Department of Justice, proposes to make minor modifications to two systems of records. The first system, entitled ''Appraisers, Approved Attorneys, Abstractors and Title Companies Files Database System (Justice/ENRD–001),'' was last published in the **Federal Register** on February 23, 2000 (65 FR 8989). The second system entitled ''Environment and Natural Resources Division Case and Related Files System (Justice/ENRD–003),'' was last published in the **Federal Register** on February 23, 2000 (65 FR 8990). The modifications involve a change to the name of a Section within ENRD; and a change in the name of an Office serving as a System Manager.

These minor changes do not require notification to the Office of Management and Budget or Congress. The changes will be effective on October 20, 2005. Questions regarding the modifications may be directed to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, National Place Building, Room 1400, Department of Justice, Washington, DC 20530.

The modifications to the system descriptions are set forth below.

Dated: October 12, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/ENRD–001

SYSTEM NAME:

Appraisers, Approved Attorneys, Abstractors and Title Companies Files Database System.

* * * * *

NOTIFICATION PROCEDURE:

Address inquiries to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Law and Policy Section; PO Box 4390; Ben Franklin Station; Washington, DC 20044–4390.

RECORD ACCESS PROCEDURES:

Submit in writing all requests for access, and clearly mark the envelope and letter, ''Privacy Act Access Request.'' Include in the request your full name, date, and place of birth, case caption, or other information which may assist in locating the records you seek. Also include your notarized signature and a return address. Direct all access requests to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Law and Policy Section; PO Box 4390, Ben Franklin Station; Washington, DC 20044–4390.

* * * * *

JUSTICE/ENRD–003

SYSTEM NAME:

Environment and Natural Resources Division Case and Related Files System.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Assistant Director, Office of Information Management, in coordination with the Office of Planning and Management's Records Management Unit.

NOTIFICATION PROCEDURE:

Address inquiries to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Law and Policy Section; PO Box 4390; Ben Franklin Station; Washington, DC 20044–4390.

RECORD ACCESS PROCEDURES:

* * * [Paragraph remains the same, except to change last sentence of paragraph to read as follows.]

Direct all access requests to the FOIA/Privacy Act Coordinator; Environment and Natural Resources Division; Law and Policy Section; PO Box 4390, Ben Franklin Station, Washington DC 20044–4390.

* * * * *

[FR Doc. 05–20997 Filed 10–19–05; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 011–2005]

Privacy Act of 1974; Notice of the Removal of System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice is removing a published Privacy Act system of records entitled ''Department of Justice (DOJ) Call Detail Records, Justice/JMD–012,'' last published in the **Federal Register** on September 27, 1996, at 61 FR 50870.

This system of records notice is no longer necessary because DOJ authorized Bell Atlantic to terminate the Message Detail Recording on April 16, 1999. At the present time, a Verizon-owned computer processes telephone circuit usage for the Washington Area Switch Program (WASP II). That function (including long-distance calling) has been totally taken in-house by Verizon. The only way DOJ can have access to this information would be by a valid subpoena issued against Verizon. The DOJ records have been destroyed in accordance with the Retention and Disposal schedule provided in the **Federal Register** notice of September 27, 1996.

Therefore, the system of records entitled ''Department of Justice Call Detail Records, Justice/JMD–012'' is removed from the Department's compilation of Privacy Act systems of records effective on the date of publication of this notice in the **Federal Register**.

Dated: October 6, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 05–20998 Filed 10–19–05; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 6, 2005 and published in the **Federal Register** on June 13, 2005, (70 FR 34152), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance to bulk manufacturer amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: October 12, 2005.

Joseph T. Rannazzisi,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–20950 Filed 10–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 25, 2005, and published in the **Federal Register** on April 4, 2005, (70 FR 17124), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methamphetamine (1105), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: October 12, 2005.

Joseph T. Rannazzisi,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration,

[FR Doc. 05–20949 Filed 10–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 25, 2005, and published in the **Federal Register** on April 5 2005, (70 FR 17262), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Thebaine (9333)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: October 12, 2005.

Joseph T. Rannazzisi,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–20948 Filed 10–19–05; 8:45 am]

BILLING CODE 4410–09–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52598; File No. SR–Amex–2005–098]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of an Options Licensing Fee for the First Trust Dow Jones Select MicroCap Index Fund (FDM)

October 13, 2005.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''), and Rule 19b–4 [2] thereunder, notice is hereby given that on September 29, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract license fee in connection with the orders of specialists, registered options traders (''ROTs''), firms, non-member market makers and broker-dealers in connection with options transactions in the First Trust Dow Jones Select MicroCap Index Fund (''FDM'').

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* the Office of the Secretary, Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds (''ETFs'') and securities indexes. The requirement to pay an index license fee to third parties is a condition to the listing and trading of these ETF and index options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, registered options traders (''ROTs''), firms, non-member market makers and broker-dealers, that is collected on every option transaction in designated products in which such market participant is a party.[5]

The purpose of the proposal is to establish an options licensing fee in connection with options on FDM. Specifically, Amex seeks to charge an options licensing fee of $0.12 per contract side in connection with FDM options for specialist, ROT, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees set forth in the Options Fee Schedule are charged only to Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of FDM options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker and broker-dealer executed on the Exchange. The Exchange believes that requiring the payment of a per contract licensing fee in connection with FDM options by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that in recent years it has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[6] Implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that these fees will help to allocate to those market participants engaging in FDM options a fair share of the related costs of offering such options.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.[7] In connection with the adoption of an options licensing fee for FDM options, the Exchange notes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

2. Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b)(4) of the Act[8] because it is an equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2)[10] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–098 on the subject line.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005) (SR–Amex–2005–087).

[6] *See* Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (SR–Amex–2001–102) and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (SR–Amex–2001–22).

[7] 15 U.S.C. 78f(b)(4). Seciton 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–Amex–2005–098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–098 and should be submitted on or before November 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5785 Filed 10–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52601; File No. SR-CHX–2005–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lot Order Processing Fees

October 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by CHX. CHX has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX, pursuant to Rule 19b–4 of the Act, proposes to amend its Participant Fee Schedule (the ''Fee Schedule'') to modify the order processing fees charged for odd-lot transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the current Fee Schedule, the Exchange charges its members for transaction and order processing fees.[5] These charges are denoted in the Fee Schedule according to the type of order and, in certain cases, the type of issue being traded. The Exchange's order processing fees include a fee for the processing of odd-lot orders, subject to a monthly maximum. The odd-lot order processing fees have not been amended since 1991, whereas other order processing and transaction fees have consistently been updated.

In this proposal, the Exchange seeks to update the odd-lot order processing fee by decreasing the per trade fee to $0.30 per trade, subject to an increased monthly maximum of $800.00. Additionally, the proposal would eliminate the existing order processing fee exemption for odd-lot orders in the stocks comprising the Standard & Poor's 500 Stock Price Index. The Exchange has represented that these fees are charged only to members.

Finally, this proposal deletes a reference to a transaction fee exemption for transactions that take place during the ''E-Session,'' which was an extended trading session from 3:30 p.m. to 5:30 p.m., Central Time. When the Exchange eliminated this trading session, the Exchange amended its rules to delete references to the E-Session. Accordingly, this remaining provision of the Fee Schedule is obsolete.

2. Statutory Basis

CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder[8] because it establishes or

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange has confirmed that it assesses order processing fees only against its members and not against non-members. Persons holding trading permits are ''members'' for the purposes of the Act, which CHX characterizes as ''participants.'' Telephone conversation between Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, and Kathleen M. Boege, Vice President & Associate General Counsel, CHX, on September 26, 2005.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2005–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CHX–2005–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2005–24 and should be submitted on or before November 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5786 Filed 10–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52603; File No. SR–NASD–2005–082]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Clarify the Listing Standards Applicable to Companies in Bankruptcy Proceedings

October 13, 2005.

On June 22, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the listing standards applicable to companies in bankruptcy proceedings. On August 23, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on September 13, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[5] the requirements of Section 15A of the Act,[6] in general, and Section 15A(b)(6) of the Act,[7] in particular, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes the proposed rule change may remove ambiguity surrounding the standards applicable to companies involved in bankruptcy proceedings and may require such companies to meet heightened initial inclusion standards upon emerging from bankruptcy, thereby protecting investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2005–082), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5787 Filed 10–19–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq made typographical corrections to the rule text and a correction to the stated purpose of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 52385 (September 7, 2005), 70 FR 54096.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Procedures for Non-Federal Navigation Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The information kept is used by the FAA as proof that non-Federal navigation facilities are maintained within certain specified tolerances.

DATES: Please submit comments by November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA).

Title: Procedures for Non-Federal Navigation Facilities.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0014.

Forms(s): None.

Affected Public: A total of 2413 navigation facility operators.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 14 hours per response.

Estimated Annual Burden Hours: An estimated 33,116 hours annually.

Abstract: The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended remote sites or airport terminals. The information kept is used by the FAA as proof that the facility is maintained within certain specified tolerances.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 14, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–21001 Filed 10–19–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) renewal of a current information collection. The rule requires passengers who intend to use an approved POC to present a physician statement before boarding. The flight crew must then inform the pilot-in-command that a POC is on board.

DATES: Please submit comments by November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA)

Title: Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0702.

Forms(s): None.

Affected Public: A total of 1,735,000 airline passengers and personnel.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 0.1 hours per response.

Estimated Annual Burden Hours: An estimated 172,694 hours annually.

Abstract: The rule requires passengers who intend to use an approved POC to present a physician statement before boarding. The flight crew must then inform the pilot-in-command that a POC is on board.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 14, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–21003 Filed 10–19–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Record of Decision (ROD) for the Final Environmental Impact Statement, Washington Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of record of decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has issued a Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) that evaluated proposed New Runways and Associated Development at Washington Dulles International Airport, Chantilly, VA.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has completed and issued its Record of Decision (ROD) for proposed New Runways and Associated Development at Washington Dulles International Airport, Chantilly, VA. FAA had published its Final Environmental Impact Statement (FEIS) containing a Final Air Quality General Conformity Determination (FGCD), (Preliminary) Final Section 106 Historic Resources Report and a Virginia Coastal Zone Consistency Determination on August 11, 2005. The U.S. Army Corps of Engineers (USACE) was a cooperating Federal agency, having jurisdiction by law because the proposed project has the potential for significant wetland impacts.

The FEIS presented the purpose and need for the proposed project, a comprehensive analysis of the alternatives to the proposed project, including the No-Action Alternative and potential environmental impacts associated with the proposed development of two new air carrier runways and related improvements at IAD. The FEIS also identified the FAA's Preferred Alternative (Build Alternative 3) and described the proposed Mitigation Program for the Preferred Alternative that will be implemented by the Metropolitan Washington Airports Authority (MWAA) to off-set unavoidable environmental impacts.

In accordance with section 176(c) of the Federal Clean Air Act, FAA has assessed whether the air emissions that would result from FAA's action in approving the proposed projects conform to the State Implementation Plan (SIP). The results of this assessment indicated that the Preferred Alternative has demonstrated

conformity with the SIP. This assessment is contained in the Final Air Quality General Conformity Determination in Appendix G–5 of the FEIS.

Pursuant to the National Historic Preservation Act of 1966, as amended, including Executive Order 11593, Protection and Enhancement of the Cultural Environment, FAA assessed whether its action in approving the proposed project would result in adverse impacts to Historic and Archaeological Resources. The results of this assessment indicated that the Preferred Alternative would result in impacts to resources that are listed in, and eligible for, listing in the National Register of Historic Places. FAA has consulted with the Virginia State Historic Preservation Office (SHPO) concerning the effects assessment and has executed a project specific Memorandum of Agreement (MOA) that identifies treatment of the affected resources. The executed MOA is contained in Appendix B of the ROD.

In accordance with the Coastal Zone Management Act of 1972, as amended, the Preferred Alternative was evaluated for consistency with the Virginia Coastal Program. FAA's evaluation determined that the Preferred Alternative is consistent with the Virginia Coastal Zone Program. The Federal Consistency Determination is contained in Appendix C–3 of the FEIS.

In accordance with Executive Order 11988, Floodplain Management and Order DOT 5650.2, Floodplain Management and Protection, FAA evaluated whether the Preferred Alternative would impact base floodplain based on a 100-year flood. The results of this assessment indicated that the Preferred Alternative would result in unavoidable impacts to the base floodplain and that all available measures to minimize harm will be included in the project design. FAA's analysis has also determined that the base floodplain encroachment with the proposed mitigation does not constitute a ''significant'' encroachment. Measures to mitigate base floodplain impact are included in the FEIS. The public was informed of the base floodplain encroachment through FAA's ongoing Public Involvement Program.

Copies of the ROD are available for review by appointment only at the following FAA/MWAA Offices. Please call to make arrangements for viewing: Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA, (703) 661–1358; Washington Dulles International Airport, Airport Managers Office, Main Terminal Baggage Claim Level, Dulles, VA, (703) 572–2710. Additionally, copies of the ROD may be viewed during regular business hours at the following locations:

1. Centreville Regional Library, 14200 St. Germaine Drive, Centreville, VA.
2. Chantilly Regional Library, 4000 Stringfellow Road, Chantilly, VA.
3. Great Falls Library, 9830 Georgetown Pike, Great Falls, VA.
4. Herndon Fortnightly Library, 768 Center Street, Herndon, VA.
5. Reston Regional Library, 11925 Bowman Towne Drive, Reston, VA.
6. Fairfax City Regional Library, 3915 Chain Bridge Road, Fairfax, VA.
7. Ashburn Library, 43316 Hay Road, Ashburn, VA.
8. Rust Library, 380 Old Waterford Road, Leesburg, VA.
9. Middleburg Library, 101 Reed Street, Middleburg, VA.
10. Purcellville Library, 220 E. Main Street, Purcellville, VA.
11. Sterling Library, 120 Enterprise Street, Sterling, VA.
12. Eastern Loudoun Regional Library, 21030 Whitfield Place, Sterling, VA.
13. Tysons-Pimmit Regional Library, 7584 Leesburg Pike, Falls Church, VA.

The ROD may also be viewed at Metropolitan Washington Airports Authority's (MWAA) Dulles Airport Web site: *http://www.mwaa.com/dulles/EnvironmentalStudies/RunwaysEIS.htm.*

FOR FURTHER INFORMATION CONTACT: Joseph Delia, Project Manager, Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA. Mr. Delia can be contacted at (703) 661–1358.

Issued in Washington, DC on October 17, 2005.

Terry Page,

Manager, Washington Airports District Office, Federal Aviation Administration.

[FR Doc. 05–21032 Filed 10–19–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5578, FMCSA–99–6480, FMCSA–2000–7363, FMCSA–2001–9258, FMCSA–2001–9561, FMCSA–2002–12884, FMCSA–2003–14223, FMCSA–2003–15892]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 30 individuals. FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting the renewal of these exemptions will continue to provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 30, 2005. Comments from interested persons should be submitted by November 21, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–5578, FMCSA–99–6480, FMCSA–2000–7363, FMCSA–2001–9258, FMCSA–2001–9561, FMCSA–2002–12884, FMCSA–2003–14223, FMCSA–2003–15892 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 30 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 30 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Thomas E. Adams
Lauren C. Allen
Tracey A. Ammons
Stanley E. Bernard
Randy B. Combs
William J. Corder
Robert L. Cross, Jr.
James D. Davis
William P. Davis
John C. Gadomski
Edward J. Genovese
Dewayne E. Harms
James W. Harris
Mark D. Kraft
David F. LeClerc
Charles L. Lovern
Jimmy R. Millage
Keith G. Reichel
Carson E. Rohrbaugh
Robert E. Sanders
Earl W. Sheets
James T. Simmons
Donald J. Snider
John A. Sortman
Jesse L. Townsend
Thomas D. Walden
James A. Welch
John M. Whetham
Edward W. Yeates, Jr.
Michael E. Yount

These exemptions are renewed subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA.

The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 30 applicants has satisfied the eligibility requirements for obtaining an exemption from the vision standard (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 54775; 64 FR 68195; 65 FR 20251; 67 FR 17102; 65 FR 45817; 65 FR 77066; 68 FR 1654; 66 FR 17743; 66 FR 33990; 66 FR 30502; 66 FR 41654; 67 FR 68719; 68 FR 2629; 68 FR 10301; 68 FR 19596; 68 FR 52811; 68 FR 61860). Each of these 30 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 21, 2005.

In the past FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). FMCSA continues to find its exemption process consistent with the statutory and regulatory requirements.

Issued on: October 14, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–21006 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 4, 2005, and comments were due by October 3, 2005. No comments were received.

DATES: Comments must be submitted on or before November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Otto Strassburg, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: 202–366–4161; FAX: 202–366–7901; or e-mail: *joe.strassburg@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Seamen's Claims—Administrative Action and Litigation.

OMB Control Number: 2133–0522.

Type of Request: Extension of currently approved collection.

Affected Public: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included are surviving dependents, beneficiaries, and legal representatives of officers or crew members.

Forms: None.

Abstract: The collection consists of information obtained from claimants for death, injury, or illness suffered while serving as officers or members of a crew on board a vessel owned or operated by the United States. The Maritime Administration reviews the information and makes a determination regarding the issues of agency and vessel liability and the reasonableness of the recovery demand.

Annual Estimated Burden Hours: 750 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on October 13, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–20952 Filed 10–19–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials Safety; Notice of Application for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107 Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. There applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before November 4, 2005.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-address stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modifications of special permits is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 14, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety Special Permits & Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of special permit	Nature of special permit thereof
7835–M		Rinchem company, Inc., Albuquerque, NM.	49 CFR 172.301(c); 177.848(d).	7835	To modify the exemption to authorize the use of alternative combination and single packagings for the transportation of Division 2.1, 2.2, 2.3, 5.1, 4.3, Class 3 and 8 materials on the same motor vehicle.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of special permit	Nature of special permit thereof
8915–M		Quimobasicos SA de CV, Monterrey, NL.	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	8915	To modify the exemption to authorize the transportation of certain manifolded DOT Specification cylinders containing R–22 and R–23 gas mixtures for disposal via incineration.
10427–M		Astrotech Space Operations, Inc., Titusville, FL.	49 CFR 173.61(a); 173.301)(f); 173.302a; 173.336; 177.848(d).	10427	To modify the exemption to authorize a quantity increase from 700 pounds to 1200 pounds of a Division 2.2 material transported on the same motor vehicle with various hazardous materials.
11967–M	RSPA–97–2991	Savage Services Corporation, Pottstown, PA.	49 CFR 174.67(i), (j)	11967	To modify the exemption to authorize the unloading of an additional Class 8 and 9 material in DOT Specification tank cars.
12783–M	RSPA–01–10309	CryoSurgery, Inc., Nashville, TN.	49 CFR 173.304a(a)(1); 173.306(a).	12783	To modify the exemption to authorize an increased fill capacity to 85% for the transportation of ORM–D materials in non-DOT specification nonrefillable containers.
13032–M	RSPA–02–12442	Conax Florida Corporation, St. Petersburg, FL.	49 CFR 173.302a(a)(1).	13032	To modify the exemption to authorize shipment of non-DOT specification pressure vessels in temperature controlled environments and without 1.4G pyrotechnic devices.
213544–M	RSPA–04–17548	Blue Rhino Corporation, Winston-Salem, NC.	49 CFR 173.29; 172.301(c); 172.401.	13544	To modify the exemption to provide relief from the marking requirements for the transportation of a Division 2.1 material in DOT Specification 4BA240 cylinders.

[FR Doc. 05–21004 Filed 10–19–05; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

Issued in Washington, DC, on October 13, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety Special Permits & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
14247–N	PHMSA–22603	Great Lakes Chemicals Corporation, West Lafayette, IN.	49 CFR 178.605	To authorize the transporation in commerce of certain hazardous materials in DOT Specification 51 portable tanks that are overdue for periodic inspection. (mode 1)
14249–N	PHMSA–22604	Remington Arms Company, Inc., Lonoke, AR.	49 CFR 173.62	To authorize the transportation in commerce of cartridges, small arms in a 20-cubic yard bulk box. (mode 1)
14251–N	PHMSA–22605	Matheson Tri-Gas, Parsippany, NJ.	49 CFR 172.400a, 172.301(c).	To authorize the transportation in commerce of overpacked cylinders containing Class 2 materials with a CGA C–7 neckring labels. (modes 1, 2, 3, 4, 5)

NEW EXEMPTION—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
14252–N	PHMSA–22606	Hobo Incorporated, Lakeville, MN.	49 CFR 173.28	To authorize the transportation in commerce of certain UN certified plastic drums containing soap products which are reused without leak-proof testing. (mode 1)
14253–N	PHMSA–22607	Matheson Tri-Gas, East Rutherford, NJ.	49 CFR 173.302a	To authorize the one-time shipment of a DOT 3AA cylinder containing hydrogen sulfide further packed in a non-DOT specification salvage cylinder. (mode 1)
14254–N	PHMSA–22608	Pharmaceutical Research and Manufacturers of America, Washington, DC.	49 CFR 173.307 (a)(5)	To authorize the transportation in commerce of aerosols with a capacity of 50 ml or less containing Division 2.2 material and no other hazardous materials to be transported without certain hazard communication requirements. (modes 1, 2, 3, 4, 5)
14255–N	PHMSA–22609	BP Amoco Chemical Company, Pasadena, TX.	49 CFR 173.240	To authorize the one-way transportation in commerce of certain non-DOT specification pressure vessels containing a Class 3 flammable liquid residue. (mode 1)
14245–N	PHMSA–22610	David E. Bradshaw, Decatur, IL.	49 CFR 171.8 Design Certifying Engineer.	To authorize an alternative qualification requirement for meeting the Design Certifying Engineer criteria 49 CFR 171.8. (mode 1)
14257–N		Origin Energy American Samoa, Inc., Pago Pago, AS.	49 CFR 173.304a	To authorize the transportation in commerce of certain non-DOT specification cylinders containing butane. (mode 1)
14262–N		GATX Rail, Chicago, IL	49 CFR 713.31	To authorize the transportation in commerce of certain rail cars containing carbon dioxide with a tank head thickness slightly below the minimum required. (mode 2)
14263–N		U.S. Department of Energy (DOE), Washington, DC.	49 CFR 178.356	To authorize the manufacture, marking and sale of DOT Specification 20PF–1, 20PF–2 and 20PF–3 overpacks manufactured in variance with the specification in 49 CFR 178.356, and for their transport when containing uranium hexafluoride, fissile in Type A packagings. (modes 1, 2, 3, 4)
14264–N	PHMSA–22711	U.S. Department of Energy (DOE), Washington, DC.	49 CFR 173.417, 173.420.	To authorize the transportation in commerce of 48-inch fissile assay uranium hexafluoride heel cylinders in an overpack. (modes 1, 2, 3, 4)

[FR Doc. 05–21005 Filed 10–19–05; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–167 (Sub–No. 1186X)]

Consolidated Rail Corporation—Abandonment Exemption—in Cumberland County, NJ

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1-mile portion of a line of railroad known as the Clayville Industrial Track, extending from milepost 0.0± to milepost 1.0± in Vineland, Cumberland County, NJ. The line traverses United States Postal Service Zip Code 08360.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 19, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 31, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 9, 2005, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

A copy of any petition filed with the Board should be sent to Conrail's representative: John K. Enright, Associate General Counsel, Consolidated Rail Corporation, 1000 Howard Boulevard, 4th Floor, Mt. Laurel, NJ 08054.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 25, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Conrail shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Conrail's filing of a notice of consummation by October 20, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 13, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20911 Filed 10–19–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34730]

James George and J&JG Holding Company, Inc.—Continuance in Control Exemption—Saginaw Bay Southern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25 for James George and J&JG Holding Company, a noncarrier (collectively, Petitioners), to continue in control of Saginaw Bay Southern Railway Company (SBS), upon SBS's becoming a rail carrier pursuant to a related transaction involving the acquisition and operation of a line of CSX Transportation, Inc.[1] Petitioners control a Class III carrier, Lake State Railway Company (Lake State), operating in Michigan. One of Lake State's lines connects near Bay City, MI, with the line to be acquired by SBS in the related transaction.

DATES: This exemption will be effective on October 28, 2005. Petitions to stay must be filed by October 21, 2005. Petitions to reopen must be filed by October 25, 2005.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 34730, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Andrew B. Kolesar III, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609 [assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339].

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 14, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20968 Filed 10–19–05; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Saginaw Bay Southern Railway Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.,* [STB Finance Docket No. 34729] (STB served September 27, 2005).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 14, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 21, 2005 to be assured of consideration.

Financial Management Service

OMB Number: 1510–0057.

Type of Review: Extension.

Title: Annual Letters—Certificate of Authority (A) and Admitted Reinsurer (B).

Description: Annual letters sent to insurance companies providing surety bonds to protect the U.S. or companies providing reinsurance to the U.S. Information is needed for renewal of certified companies and their underwriting limitations and of admitted reinsurers.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 13,674 hour.

Clearance Officer: Jiovannah Diggs (202) 874–7662, Financial Management Service, Room 144, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20955 Filed 10–19–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 14, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 21, 2005, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0043.

Type of Review: Extension.

Title: Application and Permit to Ship Puerto Rican Spirits to the United States without payment of tax.

Form: TTB form 5110.31.

Description: TTB form 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped and the bond of the U.S. person to cover taxes on such spirits.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 750 hour.

Clearance Officer: Frank Foote, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005, (202) 927–9347.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20956 Filed 10–19–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–81–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–81–86 (TD 8513), Bad Debt reserves of Banks (§ 1.585–8).

DATES: Written comments should be received on or before December 19, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Bad Debt Reserves of Banks.

OMB Number: 1545–1290.

Regulation Project Number: FI–81–86.

Abstract: Section 585(c) of the Internal Revenue Code requires large banks to change from reserve method of accounting to the specific charge off method of accounting for bad debts. Section 1.585–8 of the regulation contains reporting requirements in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting: or (3) to revoke any elections previously made.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 min.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–5784 Filed 10–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be held. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 3, 2005, from 1:30 to 5:30 p.m. and Friday, November 4, 2005, from 8 a.m. to Noon, Eastern Time.

FOR FURTHER INFORMATION CONTACT: LaVerne Walker at 1–866–602–2223.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the of the Taxpayer Advocacy Panel will be held Thursday, November 3, 2005, from 1:30 to 5:30 p.m. and Friday, November 4,

2005, from 8 a.m. to Noon, Eastern Time. If you would like to have the Taxpayer Advocacy Panel consider a written statement, please call 1–866–602–2223, or write to LaVerne Walker at 1111 Constitution Avenue, NW., Room 7704, Washington, DC 20224. Or you can contact us at *http://www.improveirs.org.* Ms. Walker can be reached at 1–866–602–2223 or by FAX at 202–622–6143.

The agenda will include the following: Discussion of various IRS issues.

Dated: October 14, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–5783 Filed 10–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0579]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 21, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0579.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0579'' in any correspondence.

Title: Request for Vocational Training Benefits—Certain Children of Vietnam Veterans (38 CFR 21.8014).

OMB Control Number: 2900–0579.

Type of Review: Extension of a currently approved collection.

Abstract: Vietnam veterans' children born with certain birth defects may submit a written claim to request participation in a vocational training program. In order for VA to relate the claim to other existing VA records, applicants must provide identifying information about themselves and the natural parent who served in Vietnam. The information collected will allow VA counselors to review existing records and to schedule an appointment with the applicant to evaluate the claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 30, 2005 at pages 37896–37897.

Affected Public: Individuals or households.

Estimated Annual Burden: 15 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 60.

Dated: October 11, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5778 Filed 10–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report changes in students' enrollment status.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 19, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0156'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice of Change in Student Status (Under Chapter 30, 32, or 35, Title 38 U.S.C; Chapters 1606 and 1607, Title 10 U.S.C.; or Section 901 and 903 of Public Law 96–342; the National Call to Service Provision of Public Law 107–314; the ''Transfer of Entitlement'' Provision of Public Law 107–107; and the Omnibus Diplomatic Security and Antiterrorism Act of 1986), VA Form 22–1999b.

OMB Control Number: OMB Control No. 2900–0156.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions use VA Form 22–1999b to report a student's

enrollment status. Benefits are not payable when the student interrupts or terminates a program. VA uses the information to determine the student's entitlement to educational benefits or if the student's benefits should be increased, decreased, or terminated.

Affected Public: State, Local or Tribal Government, Business or other for-profit, and Not-for-profit institutions.

Estimated Annual Burden: 50,570 hours.

a. VA Form 22–1999b (Paper Copy)—24, 670 hours.

b. VA Form 22–1999b (Electronically Filed)—25,900 hours.

Estimated Average Burden Per Respondent:

a. VA Form 22–1999b (Paper Copy)—10 minutes.

b. VA Form 22–1999b (Electronically Filed)—7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,274.

Estimated Total Number of Responses Annually: 370,000.

a. VA Form 22–1999b (Paper Copy)—148,000.

b. VA Form 22–1999b (Electronically Filed)—222,000.

Dated: October 11, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5779 Filed 10–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 21, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0620.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0620'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans enrolled in VA's health-care system are personally liable for emergency treatment rendered at non-VA health facilities. Veterans or their representative, and the health care provider of the emergency treatment to the veteran must submit a claim in writing or complete a Health Insurance Claim Form HCFA 1450 and 1500 or Medical Uniform Institutional Provider Bill Form UB–82 and 92 to request payment or reimbursement for such treatment. VA uses the data collected to determine the claimant's eligibility for payment or reimbursement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 2005, at page 36234.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Total Annual Burden: 147,187 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 294,373.

Dated: October 6, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service,

[FR Doc. E5–5780 Filed 10–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0028]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 21, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0028''.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0028''.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215.

b. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2.

d. 38 CFR 1.519(A) Lists of Names and Addresses.

OMB Control Number: 2900–0028.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA operates an outreach services program to ensure veterans and beneficiaries have information about benefits and services to which they may be entitled. To support the program, VA

distributes copies of publications to Veterans Service Organizations' representatives to be used in rendering services and representation of veterans, their spouses and dependents. Service organizations complete VA Form 3215 to request placement on a mailing list for specific VA publications.

b. Veterans or beneficiaries complete VA Form 3288 to provide VA with a written consent to release his or her records or information to third parties such as insurance companies, physicians and other individuals.

c. VA Form Letter 70–2 is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a veteran. VA personnel use the information to identify the veteran, determine the location of a specific file, and to accomplish the action requested by the correspondent such as processing a benefit claim or file material in the individual's claims folder.

d. Title 38 U.S.C.5701(f)(1) authorized the disclosure of names or addresses, or both of present or former members of the Armed Forces and/or their beneficiaries to nonprofit organizations (including members of Congress) to notify veterans of Title 38 benefits and to provide assistance to veterans in obtaining these benefits. This release includes VA's Outreach Program for the purpose of advising veterans of non-VA Federal, State and local benefits and programs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 30, 2005, at pages 37898–37899.

Affected Public: Individuals or Households, Not for Profit Institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 22,700 hours.

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—25 hours.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—18,875 hours.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—3,750 hours.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—50 hours.

Estimated Average Burden Per Respondent:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—10 minutes.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—7.5 minutes.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—5 minutes.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 196,200.

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—150.

b. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288—151,000.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—45,000.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—50.

Dated: October 6, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5781 Filed 10–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board will be held on November 2–3, 2005, at the Sheraton National Hotel—Arlington, 900 South Orme Street, Arlington, VA 22204. The sessions are scheduled to begin at 8 a.m. and end at 3 p.m.

The Board advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The sessions each day will open to the public from 8 a.m. to 8:30 a.m. for the discussion of administrative matters and the general status of the program. The sessions will be closed from 8:30 a.m. to 3 p.m. for the Board's review of research and development applications.

During the closed sessions of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, he disclosure of which would constitute a clearly unwarrantwed invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Assistant Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0183.

Dated: October 13, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–21015 Filed 10–19–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Infectious Diseases-A	November 9, 2005	St. Gregory Hotel.
Hematology	November 10, 2005	Hotel Madera.
Mental Hlth & Behav Sciences-A	November 11, 2005	Hilton Embassy Row.
Mental Hlth & Behav Sciences-B	November 17, 2005	The Churchill Hotel.

Subcommittee for	Date(s)	Location
Respiration	November 17, 2005	Hilton Embassy Row.
Surgery-A/B	November 21, 2005	The Churchill Hotel.
Endocrinology-A	November 21–22, 2005	St. Gregory Hotel.
Cardiovascular Studies-A	November 28, 2005	Wyndham Hotel.
Aging and Clinical Geriatrics	November 29, 2005	The Churchill Hotel.
Neurobiology-D	November 29, 2005	Hilton Embassy Row.
Oncology-B	November 29–30, 2005	St. Gregory Hotel.
Immunology-B	December 2, 2005	St. Gregory Hotel.
General Medical Science (Cellular and Molecular Medicine)	December 2, 2005	Hotel Madera.
Endocrinology-B	December 2, 2005	Wyndham Hotel.
Clinical Research Program	December 5, 2005	Wyndham Hotel.
Nephrology	December 5, 2005	St. Gregory Hotel.
Immunology-A	December 6, 2005	Topaz Hotel.
Neurobiology-A	December 7–8, 2005	Wyndham Hotel.
Gastroenterology	December 8, 2005	Wyndham Hotel.
Infectious Diseases-A	December 9, 2005	The Churchill Hotel.
Cardiovascular Studies-B	December 9, 2005	Hilton Embassy Row.
Epidemiology	December 12–13, 2005	Hilton Embassy Row.
Oncology-A	December 12–13, 2005	Wyndham Hotel.
Neurobiology-B/C	December 12–13, 2005	Wyndham Hotel.
Neurobiology-E	December 12, 2005	Hilton Embassy Row.

The addresses of the hotels are:

Hilton Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC

Hotel Madera, 1310 New Hampshire Avenue, NW., Washington, DC

St. Gregory Hotel, 2033 M Street, NW., Washington, DC

The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC

Topaz Hotel, 1733 N Street, NW., Washington, DC

Wyndham Hotel, 1400 M Street, NW., Washington, DC

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinic science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of each subcommittee meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420 at (202) 254–0288.

Dated: October 13, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–20947 Filed 10–19–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
October 20, 2005

Part II

Department of Housing and Urban Development

24 CFR Parts 3280, 3282 and 3288
Manufactured Housing Dispute Resolution Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280, 3282 and 3288

[Docket No. FR–4813–P–02; HUD–2005–0038]

RIN 2502–AH98

Manufactured Housing Dispute Resolution Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a federal manufactured housing dispute resolution program and guidelines for the creation of state-administered dispute resolution programs. Under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, HUD is required to establish a program for the timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility, and the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the one-year period beginning on the date of installation.

DATES: *Comment Due Date:* December 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (fax) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington DC 20410; telephone (202) 708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

Requirement for a Dispute Resolution Program

The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) (42 U.S.C. 5401–5426) is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. The Act was amended on December 27, 2000, by the Manufactured Housing Improvement Act of 2000, Public Law 106–569, to require HUD, among other things, to establish and implement a new manufactured housing dispute resolution program for states that choose not to operate their own dispute resolution programs and to establish guidelines for the creation of state-administered dispute resolution programs. Specifically, section 623(c)(12) of the Act (42 U.S.C. 5422(c)(12)) calls for the implementation of ''a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation.'' A state is not required to be a state administrative agency (SAA) under HUD's manufactured housing program to administer its own dispute resolution program. However, any state submitting a state plan to change its status from a nonparticipating state to a conditionally or fully approved SAA after December 26, 2005, must provide for such a dispute resolution program as part of its plan. Any state that is conditionally or fully approved on December 26, 2005, will not be required to include a dispute resolution program in its state plan as long as the state maintains conditional or full approval status. Section 623(g)(2) of the Act also requires HUD to implement, beginning on December 27, 2005, a HUD Manufactured Housing Dispute Resolution Program that will meet the above requirements in any state that has not established a program that complies with the Act.

Advance Notice of Proposed Rulemaking

On March 10, 2003 (68 FR 11452), HUD issued an Advance Notice of Proposed Rulemaking (the ANPRM) asking for comments on how the federal manufactured housing dispute resolution program should be structured and implemented. Seven state agencies, several statewide and national manufacturing housing associations, individuals, the Manufactured Housing Consensus Committee (MHCC), and other organizations, such as consumer groups and dispute resolution organizations, submitted comments. References to the comments received on a particular issue are made throughout this preamble.

II. Principle Behind Proposed Rule For the HUD-Administered Program

General

In designing the HUD Manufactured Housing Dispute Resolution Program to operate in HUD-administered states, HUD considered the approaches of existing state dispute resolution programs, examined various dispute resolution processes, and consulted with experts at the Department of Justice. Many commenters, including the MHCC, encouraged the creation of a dispute resolution process that incorporated the widely accepted processes of mediation, negotiation, and arbitration. HUD considered these processes carefully, as well as alternative approaches used in some state programs. HUD proposes the program described below as a way to achieve several goals. First, the dispute resolution program should be based on processes widely accepted by the alternative dispute resolution community and that have been proven to be successful in resolving disputes. Second, the program must be fair and expeditious. Third, the dispute resolution program must be easily accessible to all likely users. Specifically, the program should include homeowners, as well as manufacturers, retailers, and installers that are mentioned in the Act. The proposed program establishes procedures to resolve disputes among manufacturers, retailers, and installers. Although the Act does not require their

participation, HUD views homeowners as an integral part of the dispute resolution process. The MHCC and the majority of commenters favored the participation of homeowners. Virtually all commenters acknowledged a role for the homeowners in initiating the dispute resolution process and the value of homeowner input in the process. In its comments, the MHCC recommended that ''Any party to the process (the consumer, manufacturer, retailer or installer) should be permitted to initiate the dispute resolution process.'' The MHCC also stated that ''Consumers are eligible to participate in the process if they desire.'' Fourth, the program should conserve the resources and expenses of all of the parties and the Department.

The degree to which HUD has authority to use additional approaches to meet this last goal is currently being examined. For example, the MHCC and commenters have recommended that parties that use and receive the benefits of the dispute resolution process in specific cases pay at least a portion of the direct costs associated with the program in those cases. This is an approach used by many states that currently have dispute resolution programs. Such user charges would generally not be intended to cover the purely administrative costs to HUD of implementing the program, but might include a filing fee to initiate a dispute resolution process, a fee to initiate arbitration, and the assessment of arbitration costs to a losing party. Other administrative costs of the program in HUD-administered states would be funded as general program expenses. HUD is currently reviewing this approach and will not introduce a user-fee approach until HUD's authority on the approach is clear. Nevertheless, HUD is requesting comments on the advisability of incorporating such fees in HUD-administered states. If user fees are incorporated, what are appropriate amounts to be paid for what services? Should homeowners be required to pay any fees? If the dispute goes to arbitration, should all fees be paid by the party or parties determined to be responsible for the defect?

For the Federal program, HUD proposes the use of two widely accepted methods of dispute resolution, as well as an opt-out provision that would allow commercial entities an opportunity to resolve disputes outside the federal program. The program would employ elements of mandatory mediation and nonbinding arbitration. Several commenters, including the MHCC, suggested using a combination of mediation and arbitration for the federal program.

Mediation is a process that uses a neutral party or mediator to facilitate discussion between disputing parties. The primary goal of mediation is to have parties reach a mutually agreeable solution to their dispute. The mediator acts as a guide throughout the process and helps the parties to focus on the issues in order to reach an agreement. The mediator does not have final decision-making authority. Arbitration is an adjudicative process in which a neutral person, or a panel of neutral persons, makes a ruling after considering written evidence, oral argument, or both.

The objective of the dispute resolution program proposed by HUD is to resolve most requests for dispute resolution before arbitration and thereby minimize the cost to parties. HUD expects that a substantial number of potential disputes would be resolved through the Commercial Opt-Out Option. At appropriate times after the federal program is implemented, the Secretary will review the structure of the program and make modifications as necessary, using notice-and-comment rule-making procedures. The Secretary will check for any indication that the program discourages or impedes direct negotiation among the affected parties themselves and, if so, will try to modify the program to avoid this undesirable consequence. The proposed program reflects the Executive Branch's emphasis on utilizing dispute resolution processes to resolve conflicts in a cost-effective and expeditious manner, as well as on fostering good government by giving parties the opportunity to resolve disputes amicably and creatively through alternative dispute resolution. It also dovetails with Congress' active promotion of alternative dispute resolution as set forth in the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

Relationship With Notification and Correction Requirements

The proposed program is also not inconsistent with other requirements of the Act. For example, nothing in these regulations absolves the manufacturer of its notification and correction requirements under subpart I of 24 CFR part 3282 (Subpart I). Nothing in either a state or the Federal Dispute Resolution Program will interfere with Subpart I. Subpart I is based on the statutory requirements in sections 613 and 615 of the Act (42 U.S.C. 5412 and 5414), while the authority for the dispute resolution program is found under section 623 of the Act (42 U.S.C. 5422). Section 615 imposes upon manufacturers certain specific requirements for notification and correction when a manufactured home does not comply with the Manufactured Home Construction and Safety Standards in part 3280 or contains an imminent safety hazard. Section 613 of the Act requires manufacturers to correct or replace homes sold to retailers that have not yet been sold to purchasers. Nothing in section 623 of the Act changes the requirements in sections 613 and 615.

If this proposed rule is implemented, manufacturers would continue to be responsible for compliance with Subpart I, and HUD and the SAAs would continue to have authority to assure and enforce manufacturers' compliance with Subpart I. Sections 613 and 615 of the Act do not provide authority for any consumer enforcement of the notification and correction requirements, and are distinguishable from section 623 of the Act, which provides authority for the dispute resolution program. If a manufacturer receives a homeowner complaint about a manufactured home, the manufacturer has received information that triggers its Subpart I responsibilities. However, a homeowner does not trigger the dispute resolution process unless the homeowner follows the specific steps provided in this proposed rule. Thus, the dispute resolution program provides an additional homeowner protection mechanism.

III. Program Administration for the HUD-Administered Program

HUD interprets the language set forth in section 623(g)(3) of the Act (42 U.S.C. 5422(g)(3)) as permitting the use of contractors in the implementation of the dispute resolution program in HUD-administered states. HUD anticipates using contractors as screening neutrals, mediators, and arbitrators. HUD also anticipates that the contractors used would be required to become familiar with HUD's manufactured housing program, as many commenters, including the MHCC, recommended. HUD acknowledges, however, that dispute resolution experts emphasize that a primary consideration for selecting neutrals, mediators, and arbitrators should be their background and experience in dispute resolution. Independence is also an important factor.

The HUD Manufactured Housing Dispute Resolution Program would be governed by the Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.* The proposed dispute resolution program consists of six parts, in addition to the

opt-out option. The six components are: Initial Notification of a Problem, Initiating Dispute Resolution, Intake and Screening, Mediation, Nonbinding Arbitration, and Secretarial Review. Commercial entities, when they are the only parties involved in a dispute concerning who is responsible for correcting a defect, may elect to opt out of the HUD Manufactured Housing Dispute Resolution Program. The commercial entities would then engage in a neutral evaluation process of their own design. The dispute resolution program will be applicable to manufactured homes installed after December 27, 2005, or the effective date of a final rule, whichever is later. Under the HUD Manufactured Housing Program, alleged defects must be reported to the manufacturer, retailer, installer, or HUD within one year of the date of installation of the manufactured home, in order to be eligible for the dispute resolution program.

IV. HUD Manufactured Housing Dispute Resolution Program in HUD-Administered States

As noted previously, HUD will administer its dispute resolution program only in states that choose not to operate their own dispute resolution programs. The following discussion of the HUD-administered program will not be germane in any state that through state law adopts and implements its own qualifying dispute resolution program and certifies its program to HUD as described in Section VI of this preamble.

A. Initial Notification of a Problem

As previously discussed, alleged defects that can be referred into the dispute resolution program must be reported within the first year after the date of home installation. As used in HUD's Manufactured Housing Dispute Resolution Program and this new part 3288, the term ''defect'' is defined to parallel its definition in the Act. Accordingly, the proposed rule also makes clear for the dispute resolution program that the term ''defect'' covers each defect in the installation, construction, or safety of the home. Commenters familiar with HUD's long-established program for manufactured housing construction and safety standards are likely to be accustomed to using the term ''defect'' in a narrower way. In regulations implementing the historical aspects of HUD's manufactured housing program, the term has been defined to encompass only construction and safety standards, and to exclude matters that implicated significant health and safety issues. See the definition in § 3282.7(j). For purposes of the dispute resolution program, however, a defect is any problem in the performance, construction, components, or material of the home that renders the home or any part of it not fit for the ordinary use for which it was intended, including but not limited to a defect in the construction, safety, or installation of the home. In reviewing this proposed rule and preparing comments, commenters should be mindful of the broader use of the term as it applies to rights and responsibilities established under this new part 3288, as distinguished from the term's historical use in the program in part 3282.

As previously discussed, alleged defects must be reported within one year of the date of home installation. The Department strongly encourages the parties, especially homeowners, to seek to resolve disputes directly with the party or entities that they believe to be responsible before initiating the federal manufactured housing dispute resolution process. Nevertheless, all parties, including homeowners, must report the existence of possible defects within the one-year period in order to preserve the option of initiating the federal manufactured housing dispute resolution process. The Department recommends that reports of defects be made in writing, including but not limited to email, written letter, certified mail, or fax. Reports would also be permitted by telephone. A report of a defect should, at a minimum, include a description of the alleged defect. Parties alleging defects are encouraged to send any written correspondence via certified or express mail, so that there would be proof of date of delivery. The Department welcomes comments on effective ways for homeowners to report the existence of defects. After reporting a defect, the reporting party would be encouraged to allow time for a satisfactory response before initiating the HUD Manufactured Housing Dispute Resolution Program after having reported a problem.

B. Initiating the Process

Parties may initiate the federal manufactured housing dispute resolution process by submitting a request for dispute resolution to the dispute resolution provider or by calling a toll-free number. Requests for dispute resolution may come from homeowners, retailers, manufacturers, or installers.

C. Intake and Screening

Once the request for dispute resolution has been received by the dispute resolution provider, the Screening Neutral would review the sufficiency of the information provided with the request for initiation of a dispute resolution process. If a defect is properly alleged, the Screening Neutral would forward the request for mediation. If the Screening Neutral determines there is sufficient documentation of a defect presenting an unreasonable risk of injury or death, a copy of the request would be sent to HUD. If a request is lacking any of the required information, the Screening Neutral would contact the requester in order to supplement the initial request. The specific time periods for intake and screening are not codified because the Department anticipates establishing these directly as part of the contracting process with the third-party dispute resolution provider. HUD will, however, publicize these time periods on its website. The Department is interested in comments on this plan for establishing and announcing the intake and screening schedules.

D. Mandatory Mediation

The second stage in the process is mandatory mediation. The dispute resolution provider would select a mediator, who would be a different individual from the Screening Neutral used during the intake and screening process. The mediator would mediate the dispute and attempt to facilitate a settlement. The parties would be given 30 days to reach a settlement. For cases involving defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the parties would have a maximum of 10 days to reach an agreement. Sample agreements would be made available to the parties as drafting guidance. Upon reaching and signing an agreement, copies of any settlements reached would be forwarded to the parties and to HUD by the mediator. All other documents and communications used in the mediation would be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*). Once the settlement agreement is signed, the corrective repairs must be completed within 30 days, unless a longer period is agreed to by the homeowner and the parties. The MHCC commented that a 30-day period seemed an appropriate time in which to complete corrective repairs. Additional comments on the reasonableness of the periods are requested.

E. Nonbinding Arbitration

The third stage that may be invoked is nonbinding arbitration. If the parties fail to reach a settlement during

mediation, a party may, within 15 days of the expiration of the mediation period, request nonbinding arbitration. The party requesting nonbinding arbitration would be required to submit a written request for arbitration to the dispute resolution provider. The dispute resolution provider would determine how an arbitrator would be selected for each case. The parties may request an in-person hearing, to be held at the discretion of the arbitrator, after considering factors such as cost. If such a request is not made by all parties within 5 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator may conduct either a record review or a telephonic hearing. If a party chooses not to participate in the arbitration, the process would continue without input from that party. The arbitrator would have the authority to issue orders to compel the completion of the record, conduct onsite inspections, dismiss frivolous allegations, and set hearing dates and deadlines. The arbitrator would be required to complete the arbitration within 21 days of receipt of the request for arbitration. After conducting a hearing, the arbitrator would provide HUD with a written nonbinding recommendation as to who the responsible party or parties are and what actions should be taken. The contents of the recommendation would only be made available to the Secretary. Comments are requested on whether 21 days is sufficient time for the arbitration and whether additional time should be allowed for special circumstances.

F. Secretarial Review

The final stage of the process is Secretarial Review. After the arbitrator makes a recommendation, it would be forwarded to the Secretary. The Secretary would review the recommendation and the record. The Secretary would accept, modify, or reject the recommendation. Once the Secretary acts, he or she would issue an order that assigns responsibility. In the order for correction, the Secretary would include a date by which the correction of all defects must be completed, taking into consideration the seriousness of the defect. A party's failure to comply with an order of the Secretary would be considered a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

The responsible party or parties would be required to pay for or provide any repair of the home. The Secretary may apportion the costs for correction and repair if culpability rests with more than one party. The Department is interested in comments on the procedures outlined in Sections IV.C through IV.F of this preamble, particularly on whether the proposed time limits are reasonable. Comments are also welcome on whether or not there should be a time limit for Section IV.F and, if so, what a reasonable limit should be.

G. Commercial Opt-Out Option When Homeowners Are Not Responsible

Manufacturers, retailers, and installers (''commercial parties'') who have been unable to resolve a dispute involving a defect among themselves and who certify that the homeowner is not responsible for the defect would have the option to opt out of the HUD Manufactured Housing Dispute Resolution Program completely, in order to seek neutral evaluation outside of the structure of the HUD Manufactured Housing Program. To participate in the Commercial Opt-Out Option, any of the commercial parties must submit a written notification to the dispute resolution provider after it has reported an alleged defect or has been informed that an alleged defect has been reported to another party. Parties must opt out no more than 5 days after receiving notice from the Screening Neutral of a request for dispute resolution and before the HUD Manufactured Housing Dispute Resolution Program has commenced. Participants who elect to opt out must agree to engage a neutral expert. The selected neutral expert would evaluate the dispute and make an assignment of responsibility for correction and repair. The actual process followed would be designed and agreed to by the participants; there are no particular procedural requirements, such as witnesses or formal evidence. The participants may elect to memorialize the assignment of responsibility in writing. The participants must agree to allow the homeowner or the homeowner's representative to be present at any meetings and to be informed of the outcome. The participants may inform the Department of the outcome. At any time after 30 days of the Opt-Out Option notification, any party, including the homeowner, may invoke the HUD Manufactured Housing Dispute Resolution Program and proceed to mediation by following the established procedures.

The Commercial Opt-Out Option was designed taking into account MHCC comments endorsing an alternate simplified process with minimal HUD involvement. HUD expects that the Commercial Opt-Out Option would allow for the resolution of disputes concerning defects in a cost-effective, expeditious, and fair manner in HUD-administered states. The Department is soliciting comments on the Commercial Opt-Out Option, and specifically on whether the option would ensure that homeowners' problems are adequately addressed and remedied. Comments are also welcomed on the reasonableness of the 5-day time period in which parties must opt out after receiving notice of a request for dispute resolution.

V. Informing Homeowners About Manufactured Housing Dispute Resolution

One key component of the HUD Manufactured Housing Dispute Resolution Program will be notifying homeowners about the availability of dispute resolution in HUD-administered states through the HUD Manufactured Housing Dispute Resolution Program and in all other states through state dispute resolution programs. In its comments, the MHCC suggested that information about the HUD Manufactured Housing Dispute Resolution Program be made available in a standard notice that the retailer would provide to each homeowner at or before the signing of the sales contract. The homeowner would be required to sign a notice evidencing receipt. The Department is also considering notifying the homeowner by requiring a one-page informational document on the HUD Manufactured Housing Dispute Resolution Program to be included with the closing materials. The one-page informational document would mention that HUD will maintain a list of states that are operating state programs at *http://www.hud.gov,* to help homeowners determine whether their state has a program or if their state is a HUD-administered state and they should use the HUD Manufactured Housing Dispute Resolution Program. Additional comments on homeowner notification are welcomed.

In addition, the Department proposes notifying the public about the HUD Manufactured Housing Dispute Resolution Program through the Consumer Manual that 42 U.S.C. 5416 and 24 CFR 3282.207 currently require to be provided with each manufactured home. The manufacturer would be required to include in the Consumer Manual the specific language, or its equivalent, that is set out in the proposed revision of § 3282.207 in the proposed rule. The language would give detailed information about the dispute resolution program. The Department also welcomes comments on the specific proposal and language for notification in the Consumer Manual.

VI. State Dispute Resolution Programs in Non-HUD-Administered States

The HUD Manufactured Housing Dispute Resolution Program would not be implemented in states that request to be certified and that have dispute resolution programs that comply with the minimum requirements set out in these regulations. These states would administer their own dispute resolution programs. The responses to the ANPRM showed the diversity and innovation of state dispute resolution programs. Among HUD's goals in the implementation of the HUD Manufactured Housing Dispute Resolution Program proposed in this rule is to encourage the growth and continued innovation of state programs. In furtherance of this goal, this rule would establish a self-certification process for each state. A state dispute resolution program would be required to meet criteria listed in the self-certification form, but the rule establishing this form would not specify how the criteria are to be met. In this way, states will have more flexibility to design dispute resolution programs or modify existing ones according to their individual preferences and circumstances. Comments received from the MHCC strongly supported states creating and operating their own programs.

Under the rule as proposed, each state wishing to implement its own dispute resolution program must certify compliance with the minimum requirements by submitting a completed Dispute Resolution Certification Form to HUD for review and acceptance. In part, the form would serve as a self-certification very similar to the self-certification process the MHCC and other commenters proposed in their responses to the ANPRM. The Dispute Resolution Certification Form developed by HUD and attached as an Appendix to this proposed rule directs respondents to answer questions specifically related to how their dispute resolution programs comply with the requirements stated in the Act and this regulation. The Certification Form would require identification of the state agency that administers the dispute resolution program, the director of that agency, and the person who directly supervises the administration of the program. A brief written description of the state's dispute resolution program would be required, including information on how disputes are resolved regarding responsibility for correction and repair of defects in manufactured homes involving retailers, manufacturers, or installers and how the program provides for the timely resolution of disputes and the issuance of appropriate orders. HUD intends to put information about states that are certified, including each state's contact information, on its Web site.

The minimum requirements for self-certification are set forth in Part II of the proposed Certification and include: (1) The timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, or installers; (2) provisions for issuance of appropriate orders for correction and repairs of defects in the homes; (3) a coverage period for disputes involving defects that are reported within at least one year from the date beginning on the date of installation; (4) provisions for homeowners to initiate complaints for resolution and to have homeowner interests protected; (5) provisions for adequate funding and personnel; and (6) provisions for conflict of interest safeguards that ensure that a dispute resolver does not have a significant interest in the outcome of a particular dispute or a significant relationship to a person involved in a particular dispute. Any state that certifies that its program meets these six minimum requirements would be accepted and permitted to implement its own program.

A state that meets the minimum requirements set forth under § 3288.205 (e) and (f), and three of the four minimum requirements under § 3288.205(a)–(d), may be conditionally accepted by the Secretary. A state that is conditionally accepted would be permitted to implement its own program for a period of not more than 3 years absent extension of this period by HUD. Part III of the proposed Certification requires more detailed information about the state's program. HUD anticipates that Part III, as well as the other parts of the Certification, would be used to assess whether future modification of the HUD Manufactured Housing Dispute Resolution Program will be necessary.

In reviewing a state's certification, HUD may contact the state to request additional clarification or information as necessary. States that are rejected would be notified and given 30 days to submit a revised Certification. States that fail to submit a revised Certification or are otherwise still rejected would have a right to a hearing on the rejection using the procedures set forth under subpart D of Part 3282. If a state has a dispute resolution program as part of its state plan, it would be reviewed as part of the state plan. Accepted states would be required to recertify every 3 years or when there is any significant change to the state program, whichever is the earlier. If the Secretary becomes aware at any time that a state no longer meets the minimum requirements set forth under § 3288.205, or failed to properly recertify, the acceptance of the Certification may be revoked after an opportunity for a hearing. HUD welcomes comments especially from the states on the certification requirements.

HUD seeks comments from states that currently have dispute resolution programs on whether their programs include the homeowner. If such a state does not, the commenter is asked to identify any homeowner protections that are in place and to address the feasibility of adding the homeowner to its program.

VII. Specific Issues for Comment

In addition to commenting on the specific provisions included in this proposed rule, the public is invited to comment on the following questions, and any other related matters or suggestions:

(1) What other methods should be used to notify and educate the homeowner about the HUD Manufactured Home Dispute Resolution Program and the availability of state programs in non-HUD-administered states? Should a temporary notice be required to be posted in each home?

(2) What criteria should be used for conditional acceptance of state dispute resolution programs?

(3) What should be the criteria for determining whether there is adequate staffing and resources?

(4) What type of conflict-of-interest provision should states administering their own dispute resolution program be required to have?

VIII. Conforming Amendments

Since HUD is using the term ''manufactured home'' in this proposed rule, HUD is taking this opportunity to correct the definition in 24 CFR 3280.2 by adding the reference to self-propelled vehicles found in section 603(6) of the Act (42 U.S.C. 5402(6)). HUD is also clarifying the methodology for the calculation of square footage that is included in the current regulatory definition. This action will result in consistent usage of the term for all parts of the manufactured housing program.

IX. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review'').

OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Paperwork Reduction Act

The proposed information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The following table provides information on the estimated public reporting burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
State Certification for Manufactured Housing Dispute Resolution	17	1	17	1	17
Federal manufactured housing dispute resolution information*	3,600	1	3,600	1	3,600

* Almost all of the details of the requests for federal dispute resolution will follow initial complaints already sent to the manufacturer or to the federal manufactured housing program.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame, however, does not affect the deadline for comments to the agency on the proposed rule. Comments must refer to the proposal by name and docket number (FR–4813–P–02) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503 and Kathleen O. McDermott, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–8000.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule, which implements a statutory mandate to establish a program for the resolution of a narrow category of disputes, will not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

HUD has conducted a labor and travel cost impact analysis for this rule. The cost analysis determines the cost difference between a typical dispute resolution process (the process) involving manufactured housing and the civil litigation costs between one or more parties involved in a manufactured housing dispute. A typical dispute resolution method is a two-step process: Mediation and then for a small percent of unsuccessful Mediation cases, arbitration.

The potential cost impact of the mediation step for manufacturers would be approximately $1,550 per dispute and $237 for retailers and $177 for installers. HUD anticipates that it may be administering the dispute resolution process in 26 states where approximately 37,800 homes are expected to be installed annually. Currently 45 manufacturing corporate entities ship into those states, while 1,719 retailers sell homes and approximately 5,000 individuals or

businesses install manufactured homes in those states.

Based on the preceding data, HUD anticipates taking action on 1,890 complaints under the federal manufactured housing dispute resolution process in the year 2006. Presuming that the average cost of this action ($1,964) will be incorporated into the home price or related service fees of every installed home in the 26 states (37,800), the cost impact to each installed home would be $98.

If all 1,890 cases were settled through litigation rather than dispute resolution, the cost of litigating 1,890 cases would total $18.9 million. Averaged across 37,800 homes, the average cost of litigation incorporated into each home price would be $500 per home, compared to the average cost of dispute resolution of $98 per home. This would provide a savings of $402 or 75 percent per home.

The small increase in total cost associated with this proposed rule would not impose a significant burden for a small business. The rule would regulate establishments primarily engaged in the production of manufactured homes (NAICS 32991) and the sale of manufactured homes (NAICS 453930). In addition, manufactured home set-up and tie-down establishments (installers) would be included within the definition of all other special trade contractors (NAICS 23599). Of the 222 firms included under the NAICS 32991 definition, 198 are small manufacturers, which fall below the small business threshold of 500 employees. There are 10,691 retailers included under NAICS 453930; all of the firms fall below the $11 million annual income rate. Of the 31,320 firms included under NAICS 23599 definitions, only 53 firms exceed the small business threshold of 500 employees and none of these is primarily a manufactured home set-up and tie-down establishment. The rule, therefore, would affect a substantial number of small entities. However, the home manufacturers, retailers, and installers would only be subject to an associated labor cost and travel expense necessary to attend the mediation process and labor costs to participate in the expected record review and possible telephonic or face-to-face meeting for arbitration. Moreover, because the great majority of manufacturers, retailers, and installers are considered small entities, there would not be any disproportional impact on them. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. In addition, the speedier and more certain resolution of disputes should help the affected businesses.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and, in so doing, certifies that the rule would not have a significant economic impact on a substantial number of small entities. The proposed rule does not provide an exemption for small entities. This proposed rule does not establish any responsibilities for all parties, but rather establishes a process whereby all may come to an amicable solution.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order. State and local governments are not required to establish dispute resolution programs, but the rule provides a mechanism to recognize state programs that meet the statutory elements of a dispute resolution program to operate in lieu of the federal manufactured housing dispute resolution program.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing is 14.171.

List of Subjects

24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

24 CFR Part 3288

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend parts 3280 and 3282 and add a new part 3288 in chapter XX of title 24 of the Code of Federal Regulations as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

2. In § 3280.2, the definition of ''manufactured home'' is revised to read as follows:

§ 3280.2 Definitions.

* * * * *

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the construction and safety standards set forth in this part 3280. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is

automatically eligible for financing under 12 U.S.C. 1709(b).

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

3. The authority citation for part 3282 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5424.

4. In § 3282.207, redesignate paragraph (e) as paragraph (f), and add a new paragraph (e) to read as follows:

§ 3282.207 Manufactured home consumer manual requirements.

* * * * *

(e) The manufacturer must include the following language or its equivalent in the consumer manual:

Many states have a dispute resolution program that homeowners may use to resolve problems with manufacturers, retailers, or installers concerning defects in their manufactured homes. In states where there is not a dispute resolution program that meets the federal requirements, the HUD Manufactured Housing Dispute Resolution Program will operate. These are ''HUD-administered states.'' You may contact HUD at (202) 708–6423 or (800) 927–2891, or visit the HUD Web site at *http://www.hud.gov* to determine whether you have a state program or should use the HUD Manufactured Housing Dispute Resolution Program. Contact information for state programs is also available on the HUD website. If you have a state program, please contact the state for information about the program, how it operates, and what steps to take to request dispute resolution. When there is no state dispute resolution program, homeowners may use the HUD Manufactured Housing Dispute Resolution Program to resolve disputes among manufacturers, retailers, or installers for the correction or repair of defects in their manufactured home that were reported during the one-year period starting at the date of installation. Even after the one-year period, manufacturers have continuing responsibility to review certain problems that affect the intended use of the manufactured home or its parts, but correction of those problems may no longer be required under federal law. The HUD Manufactured Housing Dispute Resolution Program is not for cosmetic or minor problems in the home. It is for problems that make the home or components of the home not fit for the ordinary use for which they were intended.

The steps and information outlined below apply only to the HUD Manufactured Housing Dispute Resolution Program that operates in HUD-administered states. Under the HUD Manufactured Housing Dispute Resolution Program, homeowners must first report defects to the manufacturer, retailer, installer, or HUD. Homeowners are encouraged to report defects in writing, including but not limited to e-mail, written letter, certified mail, or fax and may also make a report by telephone. To demonstrate that the report was made within one year after the date of installation, homeowners should report defects in a manner that will create a dated record of the report, for example, by certified mail, fax or e-mail. When making a report by telephone, homeowners are encouraged to make a note of the phone call, including names of conversants, date, and time. No particular format is required to submit a report of an alleged defect, but any such report should at a minimum include a description of the alleged defect or problem.

Homeowners are encouraged to send reports of an alleged defect to the manufacturer, retailer, or installer of the manufactured home. Reports of alleged defects may also be sent to HUD at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410–8000; faxed to (202) 708–4213; or e-mailed to *mhs@hud.gov*.

If, after taking the steps outlined above, the homeowner does not receive a satisfactory response from the manufacturer, retailer, or installer, the homeowner may file a dispute resolution request with the dispute resolution provider in writing, or by making a request by phone. No particular format is required to make a request for dispute resolution, but the request must include the following information:

(1) The name, address, and contact information of the homeowner;

(2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home;

(3) The date the report of alleged defect or problem notification was made;

(4) Identification of the entities or persons to whom the report of the alleged defect was sent, and the method that was used to make the report;

(5) The date of installation of the manufactured home affected by the defect; and

(6) A description of the alleged defect.

Information about the dispute resolution provider and how to make a request for dispute resolution will be available at *http://www.hud.gov* or by contacting the Office of Manufactured Housing Programs at (202) 708–6423 or (800) 927–2891.

A screening agent from a dispute resolution provider will review the request and, if appropriate, forward the request to a mediator. The mediator will mediate the dispute and attempt to facilitate a settlement. If the parties are unable to reach a settlement, any party may request nonbinding arbitration. Should any party refuse to participate, the arbitration shall proceed without that party's input. Once the arbitrator makes a determination, the arbitrator will forward it to the Secretary of HUD, who may then adopt, modify, or reject the recommendation. The responsible party or parties will be required to pay for or provide any repair of the home.

In circumstances where manufacturers, retailers, and/or installers are involved and agree that one of them and not the homeowner is responsible for the alleged defect, these commercial entities will have the opportunity to resolve the dispute outside of the HUD Manufactured Housing Dispute Resolution Program by exercising the Commercial Opt-Out Option. Homeowners will maintain the right to be present at any meetings and to be informed of the outcome when the Commercial Opt-Out Option is exercised. At any time after 30 days of the Opt-Out Option notification, any participant or the homeowner may invoke the HUD Manufactured Housing Dispute Resolution Program and proceed to mediation.

* * * * *

5. In chapter XX, add a new part 3288, to read as follows:

PART 3288—MANUFACTURED HOME DISPUTE RESOLUTION PROGRAM

Subpart A—General

Sec.
3288.1 Purpose and scope.
3288.3 Definitions.
3288.5 Effective date.

Subpart B—HUD Manufactured Housing Dispute Resolution Program in HUD-Administered States

3288.10 Applicability.
3288.15 Eligibility for dispute resolution.
3288.20 Reporting a defect.
3288.25 Initiation of dispute resolution.
3288.30 Screening of dispute resolution request.
3288.35 Mediation.
3288.40 Nonbinding arbitration.
3288.45 Secretarial review and order.

Subpart C—Commercial Opt-Out Option in HUD-Administered States

3288.100 Scope and applicability.
3288.105 Time when Commercial Opt-Out Option available.
3288.110 Opt-out agreements.

Subpart D—State Dispute Resolution Programs in Non-HUD-Administered States

3288.200 Applicability.
3288.205 Minimum requirements.
3288.210 Acceptance and recertification process.
3288.215 Effect on other manufactured housing program requirements.

Authority: 42 U.S.C. 3535(d), 5422 and 5424.

Subpart A—General

§ 3288.1 Purpose and scope.

The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) (42 U.S.C. 5401–5426), is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. Section 623(c)(12) of the Act (42 U.S.C. 5422(c)(12)) requires the implementation of ''a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported

during the one-year period beginning on the date of installation.'' Subpart A of this part establishes general provisions applicable to HUD's implementation of a dispute resolution program as required by the Act. Subpart B of this part establishes the HUD Manufactured Housing Dispute Resolution Program that HUD will administer in any state that does not establish a program that complies with the Act. Subpart C of this part provides an option for parties that are not homeowners to resolve disputes outside of the HUD Manufactured Housing Dispute Resolution Program under subpart B. Subpart D of this part establishes the minimum requirements that must be met by a state wishing to implement its own dispute resolution program that complies with the Act, and the procedure for determining whether the requirements for complying have been met. The purpose of this part is to provide a dispute resolution process for the timely resolution of disputes among manufacturers, retailers, and installers regarding the responsibility for correction or repair of defects reported by the homeowner or others and reported in the 1-year period after installation in manufactured homes. In carrying out this purpose, it is assumed that if a manufactured home contains a defect that was not caused by the homeowner, the manufacturer, retailer, or installer is responsible for the defect and the dispute resolution process is an appropriate means to resolve issues of responsibility for correction and repair of the home.

§ 3288.3 Definitions.

The following definitions apply in this part:

Appropriate order means an order issued by the Secretary or an order that is enforceable under state law.

Date of installation means the date all utilities are connected and the manufactured home is ready for occupancy as established, if applicable, by a certificate of occupancy, except as follows: if the manufactured home has not been sold to the first person purchasing the home in good faith for purposes other than resale by the date the home is ready for occupancy, the date of installation is the date of the purchase agreement or sales contract for the manufactured home.

Day means a calendar day.

Defect includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended, including but not limited to a defect in the construction, safety, or installation of the home.

Dispute resolution provider means a person or entity providing dispute resolution services for HUD.

Homeowner means the first person to purchase or lease the home in good faith for purposes other than resale.

Manufactured home has the same meaning as ''manufactured home'' as defined at 24 CFR 3280.2.

Party or parties means, individually or collectively, the manufacturer, retailer, or installer of a manufactured home in which a defect has been reported.

Timely reporting means the reporting of an alleged defect within one year after the date of installation of a manufactured home.

Timely resolution means the resolution of disputes among manufacturers, retailers, and installers within 120 days of the time a request for dispute resolution is made, except that if the defect presents an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the resolution must be within 60 days of the time a request for dispute resolution is made.

§ 3288.5 Effective date.

The requirements of this part are applicable to manufactured homes installed after December 27, 2005, or after the initial effective date of this part, whichever is later.

Subpart B—HUD Manufactured Housing Dispute Resolution Program in HUD-Administered States

§ 3288.10 Applicability.

The requirements of the HUD Manufactured Housing Dispute Resolution Program established in this subpart B apply in each state that does not establish a state dispute resolution program that complies with the Act and has been accepted by HUD as provided in subpart D of this part.

§ 3288.15 Eligibility for dispute resolution.

(a) *Eligible parties.* Manufacturers, retailers, and installers of manufactured homes are eligible to initiate action under and participate in the HUD Manufactured Housing Dispute Resolution Program. Homeowners may also initiate and participate in the HUD Manufactured Housing Dispute Resolution Program.

(b) *Eligible disputes.* Only disputes concerning alleged defects that have been reported to the manufacturer, retailer, installer, or HUD within one year after the date of installation of the manufactured home are eligible for the HUD Manufactured Housing Dispute Resolution Program. The matter eligible for dispute resolution is the defect alleged in a timely report and any related issues.

§ 3288.20 Reporting a defect.

(a) *Form of report.* It is recommended that defects be reported in writing, including but not limited to e-mail, written letter, certified mail, or fax. Defects may also be reported by telephone.

(b) *Content of report.* No particular form or format is required to report a defect, but any such report should at a minimum include a description of the alleged defect or problem.

(c) *Record of report.* (1) *Report made to parties.* (i) *To evidence timeliness.* To avoid issues of lack of timely reporting, the report of a defect that is made to the manufacturer, retailer, or installer of the manufactured home should be done in a manner that will create a dated record of the report to demonstrate that the report was made within one year after the date of installation, for example, by certified mail, fax, or e-mail. For reports made by telephone, making a contemporaneous note of the phone call is recommended.

(ii) *Obligation to retain.* For purposes of this part, each report of a defect, including logs of telephonic complaints received by a manufacturer, retailer, and/or installer, must be maintained for three years from the date of receipt, if the report is made within one year after the date of installation.

(2) *Reports made to HUD.* (i) Reports of alleged defects that arise in the manufactured home in the first year after its installation can be sent to HUD:

(A) In writing at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410–8000;

(B) By telephone at: (202) 708–6423 or (800) 927–2891;

(C) By fax at: (202) 708–4213; and

(D) By e-mail at *mhs@hud.gov.*

(d) *Effect of report.* The reporting of a defect does not initiate the dispute resolution process, but only establishes whether the requirement of timely reporting in accordance with § 3288.15(b) has been met.

§ 3288.25 Initiation of dispute resolution.

(a) *Preliminary effort.* HUD strongly encourages the party reporting the defect to seek to resolve the dispute directly with the party or parties that they believe are responsible before initiating the federal dispute resolution process.

(b) *Request for dispute resolution.* Any of the parties may initiate the HUD

Manufactured Housing Dispute Resolution Program process at any time after a defect has been reported by requesting dispute resolution as follows:

(1) By mailing, e-mailing, or otherwise delivering a written request for dispute resolution to the dispute resolution provider at the address or e-mail address provided either at *http://www.hud.gov* or HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708–6423 or (800) 927–2891;

(2) By faxing a request for dispute resolution to the fax number provided either at *http://www.hud.gov* or HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708–6423 or (800) 927–2891; or

(3) By phoning in a request for dispute resolution at the phone number provided either at *http://www.hud.gov* or HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708–6423 or (800) 927–2891.

(c) *Required information.* The dispute resolution provider will request at least the following information to initiate the dispute resolution process:

(1) The name, address, and contact information of the homeowner;

(2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home;

(3) The date the report of the alleged defect was made;

(4) The name and contact information of the recipient or recipients of the report of the alleged defect;

(5) The date of installation of the manufactured home affected by the defect; and

(6) A description of the alleged defect.

§ 3288.30 Screening of dispute resolution request.

(a) *Review for sufficiency.* Once the request for dispute resolution has been received by the dispute resolution provider, a Screening Neutral will review the sufficiency of the information provided in the request for dispute resolution and determine if the dispute resolution process should proceed. If a defect is properly alleged, the request will be forwarded for mediation.

(b) *Insufficient information.* If a request for dispute resolution is lacking any information required to determine if the dispute resolution process should proceed, the Screening Neutral will contact the requester in order to supplement the initial request.

§ 3288.35 Mediation.

(a) *Mediator.* The dispute resolution provider will provide for the selection of a mediator. The selected mediator will not be the person who screened the dispute resolution request. The selected mediator will then mediate the dispute and attempt to facilitate a settlement.

(b) *Time.* (1) *For reaching settlement.* Except as provided in paragraph (b)(2) of this section, the parties are allowed 30 days from the commencement of the mediation to reach a mediated settlement.

(2) *Defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property.* For mediations involving defects that appear to present an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the parties have a maximum of 10 days to reach a mediated settlement.

(3) *For corrective repairs.* Unless a longer period is agreed to in writing by the parties to the mediated settlement and the homeowner, corrective repairs must be completed no later than 30 days after the settlement agreement.

(c) *Written settlement agreement.* Upon reaching an agreement, the parties will sign a written settlement agreement. The dispute resolution provider will forward copies of the agreements with the original signatures of the parties to the parties and to HUD.

(d) *Confidentiality.* Except for the report of an alleged defect, any request for dispute resolution, any agreement to mediate, and any written settlement agreement, all other documents and communications used in the mediation will be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

§ 3288.40 Nonbinding arbitration.

(a) *When initiated.* If the parties fail to reach a settlement through mediation under § 3288.35, any party may, within 15 days of the expiration of any time permitted under § 3288.35(b), initiate nonbinding arbitration.

(b) *Written request.* (1) *Submission to HUD.* A written request for arbitration must be submitted to the dispute resolution provider. Information about the dispute resolution provider and how to make a request for dispute resolution will be available at *http://www.hud.gov* or by contacting HUD's Office of Manufactured Housing Programs at (202) 708–6423 or (800) 927–2891.

(2) *Contents of request.* The written request for arbitration must include:

(i) The names and addresses of all relevant parties, including the party making the request;

(ii) A brief description of the alleged defect or a copy of the report of the defect; and

(iii) A copy of the request for dispute resolution.

(c) *Appointment and authority of arbitrator.* Upon receipt of the request, the dispute resolution provider will provide for the selection of an arbitrator. The arbitrator will have the authority to:

(1) Set hearing dates and deadlines;

(2) Conduct onsite inspections;

(3) Issue orders to compel the completion of the record;

(4) Dismiss frivolous allegations;

(5) Make a disposition recommendation to the Secretary; and

(6) Recommend apportionment of the responsibility of paying for or providing any repair of the home when culpability is assessed to more than one party.

(d) *Proceedings.* (1) The arbitrator may conduct either a record review or a telephonic hearing if the parties do not request an in-person hearing under paragraph (d)(2) of this section within 5 days of the dispute resolution provider's receipt of the request for arbitration, or if the arbitrator rejects the request for an in-person hearing.

(2) If any party wants to request an in-person hearing, in which the parties or their representatives personally appear before the arbitrator, the arbitrator will consider such a request if it is made by all of the parties that are participating in the arbitration. Such an in-person hearing will be held at the discretion of the arbitrator, after considering appropriate factors, such as cost.

(e) *Effect on nonparticipating parties.* If a party chooses not to participate in the arbitration, the process will continue without further input from that party. In such a case, the arbitrator may rely on the record developed through the arbitration to find a nonparticipating party responsible for correcting a defect.

(f) *Completion of arbitration.* Within 21 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator will complete the arbitration process and provide HUD with a written, nonbinding recommendation as to which party or parties are responsible for the defect, and what corrective actions should be taken.

§ 3288.45 Secretarial review and order.

(a) *Appropriate order.* The Secretary will review the arbitrator's recommendation provided in accordance with § 3288.40(f) and the record, if any, of the arbitration, and will issue an order accepting, modifying, or rejecting the recommendation. The Secretary will forward a copy of the order to the arbitrator and to each of the parties, whether or not a party participated in the arbitration.

(b) *Contents of order.* If the Secretary finds that a defect exists, the order will include the following:

(1) Assignment of responsibility for the correction and repair of all defects and associated costs; and

(2) A date by which the correction of all defects must be completed, taking into consideration the seriousness of the defect.

(c) *Failure to comply.* A party's failure to comply with an order issued pursuant to this part will be considered a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

Subpart C—Commercial Opt-Out Option in HUD-Administered States

§ 3288.100 Scope and applicability.

The requirements of this subpart C may be followed in lieu of the requirements of subpart B of this part to resolve disputes among manufacturers, retailers, and installers of manufactured homes in any state where subpart B of this part would otherwise apply. In limited circumstances, this subpart permits manufacturers, retailers, and installers of manufactured homes to use expert neutrals of their choosing to resolve disputes concerning defects in manufactured homes. The Commercial Opt-Out Option may be initiated after a defect has been reported, but no more than 5 days after notification from the Screening Neutral of a request for dispute resolution and before the HUD Manufactured Housing Dispute Resolution Program has commenced. Once the Opt-Out Option is initiated, none of the opt-out participants or the homeowner can invoke the HUD Manufactured Housing Dispute Resolution Program for 30 days.

§ 3288.105 Time when Commercial Opt-Out Option available.

(a) The Commercial Opt-Out Option may be initiated after a defect has been reported, but no more than 5 days after notification from the Screening Neutral of a request for dispute resolution and before the HUD Manufactured Housing Dispute Resolution Program has commenced, by a written notification to HUD's dispute resolution provider. The notification may be made to the dispute resolution provider by mail, fax, e-mail, or other delivery at the address provided at *http://www.hud.gov.*

(b) No particular form or format is required to provide notification for the Commercial Opt-Out Option, but the party or parties submitting the notification must include a statement from the parties stating that the homeowner is not responsible for the alleged defect and make reasonable efforts to include the following information:

(1) The name, address, and contact information of the homeowner;

(2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home;

(3) The date the report of the alleged defect was made;

(4) The name and contact information of the recipient or recipients of the report of the alleged defect;

(5) The date of installation of the manufactured home affected by the defect; and

(6) A description of the alleged defect.

§ 3288.110 Opt-out agreements.

(a) *Required agreement.* To use the Commercial Opt-Out Option, as appropriate, the manufacturer, retailer, and installer of the manufactured home at issue must agree:

(1) That there is a defect in the manufactured home;

(2) That the manufacturer, retailer, or installer is responsible for the defect;

(3) That the homeowner is not responsible for the defect;

(4) To engage a neutral expert to evaluate the dispute and make an assignment of responsibility for correction and repair; and

(5) To notify the homeowner of, and allow the homeowner to be present at, any meetings, and to inform the homeowner of the outcome.

(b) *Additional element of agreement.* In addition, the parties should agree to act upon the neutral expert's assignment of responsibility for correction and repair.

Subpart D—State Dispute Resolution Programs in Non-HUD Administered States

§ 3288.200 Applicability.

This subpart D establishes the minimum requirements that must be met by a state to implement its own dispute resolution program and therefore not be covered by the HUD Manufactured Housing Dispute Resolution Program established in accordance with subpart B. The subpart also establishes the procedure for determining whether the state dispute resolution program meets the requirements of the Act for operating in lieu of the federal dispute resolution program.

§ 3288.205 Minimum requirements.

The HUD Manufactured Housing Dispute Resolution Program will not be implemented in any state that complies with the procedures of this subpart D and that has a dispute resolution program that provides for the following minimum requirements:

(a) The timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, or installers;

(b) The issuance of appropriate orders for correction and repairs of defects in the homes;

(c) A coverage period for disputes that includes at least defects that are reported within one year from the date of installation;

(d) Provisions for homeowners to initiate complaints for resolution and to have homeowner interests protected;

(e) Provisions for adequate funding and personnel; and

(f) Provisions for conflict of interest safeguards which ensure that a dispute resolver does not have a significant interest in the outcome of a particular dispute or a significant relationship to a person involved in a particular dispute.

§ 3288.210 Acceptance and recertification process.

(a) *Submission of certification.* A State seeking certification must submit to HUD for review and acceptance a completed Dispute Resolution Certification Form as provided by HUD. The certification may be submitted as a part of, or independent of, a State plan under § 3282.302 of this chapter.

(b) *HUD review and action.* (1) HUD will review the Dispute Resolution Certification Form submitted by a State and may contact the State to request additional clarification or information as necessary. Upon completing its review, HUD will provide the State with notice of acceptance, conditional acceptance, or rejection of its dispute resolution program.

(2) A notice of acceptance will include the date of acceptance.

(3) If HUD rejects a State's dispute resolution program, HUD will provide an explanation of what is necessary to obtain full acceptance. A revised Dispute Resolution Certification Form may be submitted within 30 days of receipt of such notification. If the revised Dispute Resolution Certification Form is inadequate or if the State fails to resubmit within the 30-day period or otherwise indicates that it does not intend to change its Dispute Resolution Certification Form, HUD will notify the State that the dispute resolution program is not accepted and that it has a right to a hearing on the rejection using the procedures set forth under subpart D of part 3282 of this chapter.

(c) *Conditional acceptance.* A State meeting the minimum requirements set forth under § 3288.205(e) and (f), and

three of the four minimum requirements under § 3288.205(a) through (d) may be conditionally accepted by the Secretary. If HUD conditionally accepts a State's dispute resolution program, HUD will provide an explanation of what is necessary to obtain full acceptance. A revised Dispute Resolution Certification Form may be submitted within 30 days of receipt of such notification. Any State conditionally accepted will be permitted to implement its own dispute resolution program for a period of not more than 3 years absent extension of this period by HUD.

(d) *Revocation.* If the Secretary becomes aware at any time that a State no longer meets the minimum requirements set forth under § 3288.205, the acceptance of the Certification may be revoked after an opportunity for a hearing.

(e) *Recertification.* To maintain its accepted status, a State must submit a current Dispute Resolution Certification Form to HUD for review and acceptance:

(1) Every three years within 90 days of the day and month of its most recent date of acceptance; or

(2) Whenever there is a significant change to the program, whichever is the earlier. A State that is conditionally accepted will be permitted to implement its own program for a period of not more than three years absent extension of this period by HUD.

(f) *Inclusion in State plan.* If a State dispute resolution program is part of a State plan, it will be reviewed annually as part of the State plan.

§ 3288.215 Effect on other manufactured housing program requirements.

A State with an accepted dispute resolution program will operate in lieu of HUD's Manufactured Housing Dispute Resolution Program established under subpart B of this part 3288. A State dispute resolution program, even if it is an accepted dispute resolution program under this part, does not supersede the requirements applicable to any other aspect of HUD's manufactured housing program. Any responsibilities, rights, and remedies applicable under the Manufactured Home Construction and Safety Standards in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts in all States.

Dated: September 27, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210–27–P

APPENDIX (This appendix will not be codified in the CFR)

DISPUTE RESOLUTION CERTIFICATION

Pursuant to 42 U.S.C. § 5422(g) (section 623(g) of the National Manufactured Housing Construction and Safety Standards Act of 1974), HUD will implement a dispute resolution program in each state that does not have a program meeting the requirements of 42 U.S.C. § 5422(c)(12). This Dispute Resolution Certification Form will be used for states to self-certify the adequacy of the state's dispute resolution program and for HUD to review that self-certification. Your answers to the following questions are necessary for a proper review. Please answer each question concisely and certify the responses as full and accurate at the end of the form. Use additional pages if necessary.

Submit completed form to: Office of Manufactured Housing Programs
Department of Housing and Urban Development
451 Seventh Street, SW
Room _____
Washington, DC 20410

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-1000

Part I

Name, address, telephone number, and email address of the state agency responsible for administering the dispute resolution program:

Name and title of the administrator or director in charge of the state agency:

Name, title, address, telephone number, and email address of the person responsible for administering the dispute resolution program:

Part II

Indicate whether the state dispute resolution program being administered meets the following minimum requirements:

1. Provides for the timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, and installers?
   Yes _____ No _____

2. Provides for the issuance of appropriate orders for the correction and repair of defects in the manufactured homes? Yes _____ No _____

3. Provides a coverage period for disputes involving defects that are reported within a minimum of one year from the date beginning on the date of installation? Yes _____ No _____

4. Provides for homeowners to initiate complaints for resolution and to have homeowner interests protected? Yes _____ No _____

5. Provides adequate funding and personnel? Yes _____ No _____

6. Provides conflict of interest safeguards that ensure that a dispute resolver does not have a significant interest in the outcome of a particular dispute or a significant relationship to a person involved in a particular dispute? Yes _____ No _____

Part III – Additional Information

1. Describe, in detail, the state's dispute resolution program.

2. Describe how disputes regarding responsibility for correction and repair of defects in manufactured homes involving retailers, manufacturers, or installers are resolved.

3. Describe how the state's dispute resolution program addresses defects as defined in 24 CFR Part 3288, and any special requirements applicable to defects that involve an unreasonable risk of injury or death to occupants of a manufactured home or significant loss or damage to valuable personal property.

4. Explain the state's requirements for providing timely resolution of disputes.

5. What is the average length of time it takes to complete the dispute resolution process from the time a complaint has been received, if there is sufficient program experience for data to be available?

6. What is the time period for initiating a dispute resolution process?

7. Describe the appropriate orders issued as part of the state's dispute resolution program.

8. Describe the staff and funding utilized by the state's dispute resolution program.

9. Explain the safeguards provided for in the state's dispute resolution program to ensure that the system is fair to manufacturers, retailers, installers, and homeowners.

Part IV

COMPLIANCE CERTIFICATION

I hereby certify that, to the best of my knowledge, the answers given are truthful, accurate, and complete.

Date: _____ **By:** _____
(Signature)

_____
(Print or type name and official capacity)

_____
(State)

[FR Doc. 05–20953 Filed 10–19–05; 8:45 am]
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Federal Register

Thursday,
October 20, 2005

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732
Revisions to the State Program Amendment Process; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732

RIN 1029–AC06

Revisions to the State Program Amendment Process

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are revising our regulations pertaining to the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The specific regulations being revised govern the standards for determining when proceedings that lead to the substitution of Federal enforcement for all or part of an approved State program should be initiated because of the State's failure to amend its program as directed. These revisions provide us with the discretion to consider additional relevant factors regarding the performance of the State in effectively maintaining its program before determining that proceedings leading to the substitution of Federal enforcement are warranted. We are also revising our regulations that govern the time periods and schedule for processing State program amendments.

EFFECTIVE DATE: November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew DeVito, Office of Surface Mining Reclamation and Enforcement, MS–252–SIB, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2701. E-mail: *adevito@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information on the Rulemaking
II. Discussion of the Revisions and Our Response to the Comments Submitted
III. Procedural Matters and Required Determinations for This Rule

I. Background Information on the Rulemaking

Why are we revising our regulations?

On December 3, 2003 (68 FR 67776), we published proposed revisions to our regulations that govern the processing of State program amendments submitted by a State for approval under SMCRA. We proposed the revisions because of a perceived need to provide OSM with discretion to resolve issues affecting approved State regulatory programs, their maintenance, and amendment. The revisions will allow us to focus our attention and resources on State program deficiencies that have adverse on-the-ground effects, or indicate that the State may not have the capability or intent to effectively administer and maintain all or part of its approved program. Our experience in processing State program amendments over the past 20 years has demonstrated a need for greater discretion when working in partnership with the States to maintain an effective nationwide program for the regulation of surface coal mining and reclamation operations. Recent developments with regard to the availability of future funding for States with approved programs have added to the need for revising our regulations. These reasons are discussed in greater detail in Section II where we describe the revisions we are making, the comments received on the proposed revisions, and our response to them. Before proceeding to Section II, we would like to provide some of the background information necessary for a better understanding of the regulatory plan established by SMCRA and the need for the revisions we are adopting today.

What is an approved State program?

Section 503 of SMCRA grants each State in which there are or may be surface coal mining and reclamation operations conducted on non-Federal lands the right to assume exclusive jurisdiction (primacy) over those operations. To assume primacy, the State must submit to the Secretary of the Interior (Secretary) for approval, a State program that demonstrates that the State has the capability for carrying out the provisions of SMCRA. As of the date of this rulemaking, 24 States have primacy. The implementing regulations at 30 CFR part 732 (hereinafter referred to as Part 732) provide the criteria and procedures for decisions to approve or disapprove submissions of State programs.

What is a State program amendment?

Although SMCRA does not specifically address the State program amendment process, by regulation at § 732.17, we provided the criteria and procedures for amending State programs in anticipation of a need to modify the programs as conditions or national rules change. For various reasons, such as legislative changes to the provisions of SMCRA, litigation resulting in adverse court decisions, or changes in coal mining technology, we are required to revise our regulations. As a result, all 24 States with approved State programs may be required to amend their programs in order to be ''no less effective'' than the OSM regulatory program. Also, States may decide to amend their programs on their own initiative.

If we determine that a State program amendment is necessary, then, as required by § 732.17(d), we must notify the State regulatory authority of the need to amend its approved program. Within 60 days after notification, the State must submit (1) a proposed written amendment, or (2) a description of an amendment and a timetable for enactment that is consistent with established administrative or legislative procedures in the State. Pursuant to § 732.17(f)(2), the Director of OSM (Director) must begin proceedings under 30 CFR part 733 (hereinafter referred to as Part 733) if the State regulatory authority does not submit the proposed amendment or a description and timetable within the 60 days, does not subsequently comply with the submitted timetable, or if the amendment is not approved.

Another situation in which the Director may be required to begin Part 733 proceedings under 30 CFR 732.17(f)(2) involves an obligation called a ''required amendment.'' When a deficiency has been identified in a State program and a State's proposed amendment to remedy that deficiency is incomplete, (i.e., when it fails to include all necessary elements or supporting documentation but does not actually conflict with the corresponding Federal requirement), we issue a final rule establishing additional requirements that the State must meet by submitting a new amendment. The new amendment, called a ''required amendment,'' must resolve any deficiencies and noted inconsistencies. We consider a final rule imposing a ''required amendment'' to be the equivalent of the Part 732 notification required by § 732.17(c) and (d) and, therefore, subject to the provisions of § 732.17(f)(2) if the State fails to comply with the terms of a required amendment.[1]

What is a Part 733 proceeding?

If the Director has reason to believe that a State is not effectively implementing, administering, maintaining, or enforcing any part of its approved State program, then, under § 733.12(b), the Director must promptly notify the State regulatory authority in writing. The notification must provide sufficient information to allow the State

[1] See OSM Directive STP–1 (July 31, 2000) at 4.e, 4.f, and 4.1.

to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced; provide the reasons for such belief; and specify the time period for the State to accomplish any necessary remedial actions. If, after certain hearing procedures, the Director finds under § 733.12(e) that (1) the State has failed to effectively implement, administer, maintain, or enforce all or part of its approved State program, and (2) the State has not demonstrated its capability and intent to administer the State program, the Director must take one of the following actions. The Director must either initiate direct Federal enforcement of all or part of the State program; or recommend to the Secretary that he/she withdraw approval of the State program, in whole or in part, and establish a Federal program for the State.

What are the consequences of a Part 733 Proceeding?

The substitution of Federal enforcement under § 733.12(e) for all or part of an approved State program results in substantial disruption to the State, the Federal government, and the coal industry. We have initiated a Part 733 action ten times in our history. We initiated action under Part 733 in Oklahoma (1981, 1983, and 1993), Kansas (1983), Tennessee (1983), Montana (1993), Utah (1995), West Virginia (2001), Missouri (2003), and Ohio (2005). In the Montana, Utah, Kansas, West Virginia, and the 1981 and 1993 Oklahoma actions, the issues were resolved without Federal takeover of any part of the State programs. In three cases, we did take over partial enforcement of the State program—Oklahoma in 1984, Tennessee in 1984, and Missouri in 2003. In Oklahoma, the State took action to address the deficiencies, and full authority was returned to the State. In Tennessee, after we took over partial enforcement, the State chose to terminate its approved program and repealed the Tennessee Coal Surface Mining Act and its implementing regulations. We promulgated a Federal program for that State in 1984. After implementing the Federal program, we were required under section 504(d) of SMCRA to review all the permits issued by the State of Tennessee under the standards of the new Federal program. All coal operators who had posted bonds with the State for permits issued under the approved State program were required to post new bonds payable to the United States or execute assignments of the existing bonds. See 49 FR 38874 (October 1, 1984). The substitution of the Federal program in Tennessee resulted in delays in processing and issuing new coal permits in the State.

With regard to the situation in Missouri, on July 21, 2003, the Governor of Missouri notified us that the State was experiencing difficult budgetary and revenue shortfalls. As a result of the situation, the Governor requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. The Governor indicated that he was hopeful his request would be temporary and that he would continue to work with the State legislature in an attempt to assure adequate funding for all State program responsibilities.

On August 4, 2003, we notified the Governor that we were obligated, in accordance with § 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed. We cited problems with the State's implementation of the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities. As a result of substituting Federal enforcement, we became responsible for, among other things, approximately 40 permitting actions, 24 inspectable units, and an unsuitability petition filed on October 20, 2003.

Missouri recently addressed the issues leading to the substitution of Federal enforcement by completing certain remedial actions. On May 27, 2005, the Governor petitioned OSM for the termination of Federal enforcement, we are in the process of reviewing the petition. For more details on the Part 733 action in Missouri, see 68 FR 50944, August 22, 2003, and 69 FR 19927, April 15, 2004.

The most recent Part 733 action was initiated on May 4, 2005, when we sent a letter to the State of Ohio concerning problems with its alternative bonding system. That matter is still pending.

While the Tennessee Federal program resulted from the termination of the State program by the State, and Federal enforcement in Missouri resulted from budgetary problems within the State, and neither resulted from a delinquent State program amendment, both provide an illustration of the difficulties and hurdles we face when we are required to take over a State program or substitute partial Federal enforcement.

What are the problems with the current regulations?

As previously mentioned, our regulations at § 732.17(f)(2) require us to begin proceedings against a State under Part 733 when the State fails to (1) submit a requested amendment or description and timetable for enactment within 60 days from the receipt of notification, (2) comply with the submitted timetable, or (3) obtain approval of the program amendment.

While there may be circumstances in which the substance of an outstanding State program amendment is such that the State's failure to make the required submissions or obtain approval of the amendment may warrant proceedings under Part 733, that is not the case in most instances. As required by section 503(a)(1)–(7) of SMCRA and 30 CFR 731.14(g), each State program is required to contain approximately 17 systems involving permitting, lands unsuitability petitions, administrative and judicial review, inspection and enforcement, civil penalties, etc. Most deficiencies in State programs that we identify are either minor in nature or do not render any major system within an approved State program inoperable or ineffective, in whole or in part.[2] Nevertheless, under the standards of § 732.17(f)(2), the Director has no discretion and must begin proceedings under Part 733.

The standards for beginning Part 733 proceedings in all other circumstances are found at § 733.12(b), which specifies that:

> If the Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program, the Director shall promptly notify the State regulatory authority in writing.

By requiring the commencement of a Part 733 proceeding, the provisions of § 732.17(f)(2) seem to create an irrebuttable presumption that, under § 733.12(b), the ''Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program'' when the timetable for submission has not been met or the amendment has not been approved. Once we initiate proceedings under Part 733, the Director may not substitute direct Federal enforcement for all or part of the State program or

[2] For an example of a required State program amendment, *see* 30 CFR 938.16(qqq) requiring that ''[b]y January 6, 1998, Pennsylvania * * * submit a proposed amendment to * * * require that any applications for permit renewal be submitted at least 120 days before the permit expiration date.'' Also, *see* 30 CFR 948.16(llllll) requiring that ''[b]y February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to * * * provide that * * * soil substitute material * * * be equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.''

recommend to the Secretary that he/she withdraw approval of the State program, unless the Director makes the findings required by § 733.12(e). In that regard, the Director must find that the State has both failed to implement, administer, maintain or enforce effectively all or part of its approved State program, and has not demonstrated its capability and intent to administer the State program. In a situation where there is only one outstanding amendment that is administrative in nature, with no resulting adverse on-the-ground effects, it is unlikely that the Director would be able to make the two findings required by § 733.12(e); nevertheless, under the current regulations, the Director would still be required to begin Part 733 proceedings.

How were the regulations in § 732.17(f) developed?

The regulations in § 732.17(f) were proposed on September 18, 1978 (43 FR 41662, 41678) and issued as final rules on March 13, 1979 (44 FR 14902, 14967), prior to OSM's having any experience in processing State program amendments. Section 732.17(f) was written under the assumption that, once a State had an approved State program, revisions to that program would be few and far between. In fact, while section 503 of SMCRA sets forth detailed information on the initial submission, resubmission, and approval of State programs, no detailed guidance is provided for amending an approved State program. The only place in SMCRA where amendments to approved State programs are discussed is in section 102(i) which states that one of the purposes of SMCRA is to ''assure that appropriate procedures are provided for * * * the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act.''

The 1979 regulations at § 732.17(f)(1) specified that:

> If the State regulatory authority does not propose an amendment within 60 days from the receipt of the notice, or the amendment is not approved under this Paragraph, the Director shall begin proceedings under 30 CFR [part] 733, to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

We proposed revising § 732.17(f)(1) on December 4, 1981 (46 FR 59482, 59487) because of the ''difficult administrative burden'' it imposed on the States by requiring them to submit a written amendment within 60 days after notification by the Director. The 1981 proposed revision allowed the State the option of either submitting the State program amendment within 60 days ''or a description of an amendment to be proposed that meets the requirement of the Act, and this chapter, and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.'' Some States, such as West Virginia, must have their regulations approved by the State legislature. One comment was submitted on the proposed revision and it was in support of the change. The proposed revision was adopted on June 17, 1982 (47 FR 26358) and it is the language that is currently in § 732.17(f)(2).

Why are so many State program amendments required?

As previously indicated, the regulations in Part 732 were most likely written under the assumption that, once a State program was approved, there would be few amendments required. Unfortunately, that has not been the case. The main reason for this is that nearly every time we issue a substantive Federal regulation, it ends up in litigation. As the United States Court of Appeals for the District of Columbia Circuit stated in 1991 in *National Wildlife Federation* v. *Lujan*, 950 F.2d 765, 767 (D.C. Cir. 1991), ''[a]s night follows day, litigation follows rulemaking under this statute.'' The ongoing litigation has resulted in a substantial number of revisions to the Federal regulations.

Shortly after the permanent program rules were issued in 1979, challenges to them were filed in court by the coal industry, several States, and citizen and environmental groups. The court resolved those challenges in three opinions issued in 1980. While those opinions were on appeal to the United States Court of Appeals for the District of Columbia Circuit, OSM announced that it would promulgate revised regulations in order to allow the States and operators greater flexibility in how they achieved compliance with SMCRA. The main thrust of the revisions was a change from regulations that contained design criteria to those that contained performance standards. The revised regulations were in turn challenged by various citizens and environmental groups as well as coal industry representatives. Some challenged rules were upheld, while others had to be rewritten by OSM. Each time a rule had to be rewritten, States had to amend their programs. Currently, two significant OSM rules are the subject of pending litigation (Valid Existing Rights and Ownership and Control). Both will require the submission of State program amendments from the 24 States with approved programs.

Beginning in 1991, we have tracked the number of State program amendments processed each year in our annual report. In the past 14 years, 1991–2004, a total of 1378 State program amendments (proposed and final) have been published in the **Federal Register**, for an average of approximately 100 per year. Each State program amendment may contain more than one issue. A December 27, 2001, final rule (66 FR 67010) issued on a Pennsylvania State program amendment analyzed over 140 separate issues and ordered the State to submit an additional 47 required amendments. Recently, a final rule (70 FR 8002; February 16, 2005) issued on a Montana State program amendment analyzed revisions to nine sections of the Montana Code Annotated. These examples give an indication of the work involved for both the States and OSM in maintaining State programs. This amount of work was never contemplated when the provisions of § 732.17(f) were promulgated in 1979 or were revised in 1982.

We believe that, in situations where the State has not submitted and obtained approval of an amendment within certain time periods, a less disruptive and more effective way to obtain the delinquent amendment is to continue discussions with the State, for a reasonable period of time, in an attempt to resolve issues rather than to automatically begin formal proceedings under Part 733. To automatically begin proceedings under Part 733, as currently required by § 732.17(f)(2), damages the working relationship we have with a State that has voluntarily agreed to work in partnership with OSM to implement and administer the provisions of Title V of SMCRA. This is particularly so when the nature of the delinquent amendment does not warrant such action.

II. Discussion of the Revisions and Our Response to the Comments Submitted

What are the revisions to § 732.17(f)(2)?

Under the existing regulation in § 732.17(f)(2), the Director is required to begin proceedings either to enforce that part of the State program affected or to recommend to the Secretary that he/she withdraw approval, in whole or in part, and implement a Federal program, if (1) the State fails to submit a requested amendment or description and timetable for enactment within 60 days from the receipt of notification, (2) the State fails to comply with the submitted

timetable, or (3) the amendment is not approved.

In addition to making certain non-substantive editorial changes for clarity, this rule revises that requirement by adding the words ''if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved State program.'' The revised rule language in § 732.17(f)(2) will read as follows:

> If the State regulatory authority does not submit the information required by paragraph (f)(1), or does not subsequently comply with the submitted timetable, or if the resulting proposed amendment is not approved under this section, then the Director must begin proceedings under 30 CFR part 733 if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved State program.

By adding the words ''if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved State program,'' we are adopting the same standard set forth in § 733.12(b) that is used for commencing a Part 733 proceeding in all other situations. Therefore, under the revised regulations, in addition to the State's failure to (1) submit a requested amendment or description and timetable for enactment within 60 days from the receipt of notification, (2) comply with the submitted timetable, or (3) obtain OSM approval of an amendment submitted in response to the notification under paragraph (f)(1), there must also be a determination by the Director that commencement of a Part 733 proceeding is warranted because of circumstances that tend to indicate that the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved State program. Those circumstances may be that one amendment of critical importance has been outstanding for a short period of time or they may be that a series of non-critical amendments have been outstanding for a long period of time with little or no effort on the part of the State to amend its program. Under our revision, the mere failure to meet a timetable, by itself, will no longer be sufficient to require the commencement of a Part 733 proceeding.

In the proposed rule, we had included a cross-reference to § 732.17(h)(8) in § 732.17(f)(2). Section 732.17(h)(8) provides for the submission of revised State program amendments when the original submission is not approved. Section 732.17(f)(2), as it currently stands, is silent on the submission of revised amendments submitted pursuant to § 732.17(h)(8). There was no discussion of the inclusion of the cross-reference in the proposed rule, but the intent was to add clarity to the regulations by tying the two provisions together. After further consideration, we have concluded that, for two reasons, the cross-reference should not be included in the final rule language. First, the cross-reference is unnecessary because § 732.17(f)(2) pertains to a situation in which an amendment is ''not approved under this section.'' The term ''this section'' refers to all of § 732.17, which includes paragraphs (a)–(h).

Second, there are situations in which our decision not to approve an amendment or amendment provision does not create an obligation on the part of the State to resubmit a revised version of the amendment or amendment provision. Such situations can occur when a State submits an amendment that, if approved, would make the approved State program less stringent than the Act or less effective than the Secretary's regulations. Under § 732.17(g), if we do not approve an amendment, it does not take effect and does not become part of the State program. Therefore, in the absence of a requirement to submit a new amendment, established by OSM in a final rule or other Part 732 notification, the State has no obligation to submit a revised version of an amendment that we did not approve. If we included the cross-reference to § 732.17(h)(8) in § 732.17(f)(2), and if we made the corresponding changes to § 732.17(h)(8) that we proposed, then the State would be obligated to submit a revised version of an amendment that we did not approve even if that revision is not required to make the State program no less stringent than the Act or no less effective than the Secretary's regulations.

One recent example of a situation in which there was no need for the State to resubmit an amendment that we did not approve involved a proposed State program amendment providing for the construction of durable rock fills with erosion protection zones (EPZs). EPZs are extensions of underdrains within durable rock fills that are used to control erosion, dissipate runoff from the fill, and enhance the stability of the durable rock fill. Under the proposed amendment, an EPZ could remain after mining if it was approved in the reclamation plan. Because the EPZ resulted in additional stream loss without any apparent environmental benefit, the U.S. Environmental Protection Agency (EPA) conditioned its concurrence in our approval of the amendment on the addition of a requirement that all EPZs be removed after mining. In response to this EPA requirement, we did not approve the phrase, ''Unless otherwise approved in the reclamation plan.'' In the absence of that clause, the remaining portion of the proposed State program amendment, which we approved, requires operators to remove EPZs after mining. Therefore, there was no need for the State to amend its regulatory program because, as provided by 30 CFR 732.17(g), the clause that we did not approve never became part of the State program.

Finally, we have inserted the words ''resulting proposed'' before ''amendment'' in paragraph (f)(2) to clarify that the provisions of that clause of that paragraph apply only to decisions on amendments that States propose in response to Part 732 notifications, not to decisions on amendments that States propose on their own initiative. This editorial clarification does not alter the meaning of the existing rule.

What were the comments submitted on our proposed revisions to § 732.17(f)(2)?

Two commenters stated that the proposal is irresponsible, in direct conflict with SMCRA, and is contrary to law because it is an abrupt reversal of agency regulatory policy without a rational and adequate basis. They asserted that the proposal eliminates a former regulation deemed necessary to assure proper implementation of SMCRA without replacing the removed provision with another equally permissible and effective mechanism for satisfying the Congressional goal.

We disagree. Federal courts have held that an agency's rules, once adopted, are not frozen in place. An agency may alter its rules in light of its accumulated experience in administering them. An agency must, however, offer a reasoned explanation for the change. *Citizens Awareness Network, Inc.* v. *United States,* 391 F.3d 338, 352 (1st Cir. 2004) (and cases cited therein). If an agency changes its course by rescinding a rule, it is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance. *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). In reviewing actions by OSM to promulgate national rules, a court will use the criteria specified in section 526(a)(1) of SMCRA to determine if the

action was arbitrary, capricious, or otherwise inconsistent with law. In making that determination, the court will look to the authorizing statute, here SMCRA, to determine whether Congress has directly spoken to the precise question at issue. If the statute is silent or ambiguous, the court typically defers to the agency's reasoned interpretation to determine if the agency's action is based on a permissible construction of the statute. *Pennsylvania Coal Ass'n* v. *Babbitt,* 63 F.3d 231, 236 (3rd Cir. 1995) (and cases cited therein).

SMCRA does not specify any process for amending an approved State program other than the requirement for public participation found in section 102(i). The existing provisions in § 732.17, including the submission/approval process and time periods, were promulgated by OSM as permissible under the authority provided in SMCRA, but not mandated by SMCRA or its legislative history. The process in § 732.17(f)(2) requiring a Part 733 proceeding was initially proposed in 1978 and adopted in 1979 before OSM had extensive experience in processing State program amendments. Neither the preamble to the 1978 proposed rule nor the preamble to the 1979 final rule gives any explanation as to why § 732.17(f)(1) required the Director to begin Part 733 proceedings without first going into the reasoned determination required by § 733.12(b) for all other types of State deficiencies. The preambles give no indication the drafters of the regulations ever contemplated the volume of State program amendments that would be required by OSM, or the possibility that a delinquent program amendment might be so inconsequential to the effectiveness of the approved State program that Part 733 proceedings would not be warranted.

Although we are revising a longstanding agency standard, one based on timetables, we are replacing it with an OSM standard that is equally longstanding and one more rationally related to the findings required by § 733.12(e). The new standard for § 732.17(f)(2) is the same as the standard found in § 733.12(b) for determining when Part 733 proceedings should be initiated for all other types of State deficiencies. Adoption of this standard will give us the discretion needed to consider other relevant factors in determining when to initiate Part 733 proceedings against a State. Those factors include the importance of the outstanding amendment to the effectiveness of the approved State program, the effect its absence is having on the environment and public health and safety, and the lack of any reasonable explanation for failing to comply with submission requirements. Our decision to initiate Part 733 proceedings will no longer be controlled primarily by timetables.

We proposed our revisions after many years of experience in processing State program amendments, and with a firm understanding of how difficult it can be for a State administrative agency to submit an amendment compatible with the Federal regulation, particularly when the submission requires action by the State legislature. In the preamble to the December 3, 2003, proposed rule (68 FR 67777), we stated that:

> [I]n situations where the State has not submitted and obtained approval of a required amendment, a less disruptive and more effective way to obtain the required amendment is to work with the State at the staff level to discuss problems and resolve issues rather than automatically begin formal proceedings under Part 733. To automatically begin proceedings under Part 733, as currently required by 30 CFR 732.17(f)(2), damages the working relationship we have with a State that has voluntarily agreed to work in partnership with OSM to implement and administer the provisions of Title V of SMCRA.

SMCRA is very clear with regard to the State-Federal working relationship. Section 101(f) of SMCRA provides that the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface coal mining and reclamation operations should rest with the States. Section 102(g) of SMCRA specifies that one of the purposes of SMCRA is to assist the States in developing and implementing a program to achieve the purposes of SMCRA.

It should be noted that, in support of the State-Federal working relationship envisioned by SMCRA, section 705(a) authorizes the Secretary to make an annual grant of up to 50 percent of the cost incurred by a State in administering and enforcing its approved regulatory program (a Title V grant). In addition, if a State has an approved State program under section 503 of SMCRA, and has an approved State Abandoned Mine Reclamation Program submitted under section 405(b) of SMCRA, then the State is entitled to an annual grant under section 405(c) for the reclamation of abandoned mine lands within the State (a Title IV grant). As an example of how this works, in Fiscal Year 2004, the State of West Virginia received a $10,520,169 Title V grant from OSM for regulating surface coal mining under its approved State program. That sum was determined to be 50 percent of the cost of regulating surface coal mining within West Virginia. The State appropriated and spent an additional $10,520,169 of its own money to cover the remaining 50 percent of the regulatory program cost. As an inducement to, and in consideration for assuming Title V regulatory responsibility and spending $10,520,169 of its own funds, the State received a Title IV abandoned mine land reclamation grant of $33,040,900.

The ability to make Title IV grants available is dependent on the collection of a reclamation fee established by section 402(a) of SMCRA. The fee is assessed against each ton of coal produced. The authority to collect this fee was scheduled to expire on September 30, 2004, but was extended through June 30, 2005, by Pub. L. 108–447, then through September 30, 2005, by Pub. L. 109–13, and most recently through June 30, 2006, by the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–54). At the writing of this rule, the prospects for the reauthorization of the reclamation fee beyond that date remain uncertain as do the prospects for Title IV grants in future years as existing funds are disbursed and no additional funds are collected.[3] If Title IV grant money is no longer available, the incentive for a State to continue to regulate surface coal mining operations at considerable expense to the State will be diminished. The threat inherent in a Part 733 proceeding lies not only in the resulting public embarrassment to the State but also in the potential loss of its approved State program and eligibility for Title IV grant money. If Title IV grant money is no longer available, the leverage we currently have from the threat of a Part 733 proceeding and the denial of grant money will be substantially diminished.

The possible loss of future Title IV grant money, and with it the incentive for a State to keep its approved regulatory program, provide another reason to revise our regulations. The revisions will provide the Director with the discretion needed to manage the State program amendment process and resolve issues with the States in a less confrontational manner.

Two commenters stated that the proposed rule would eliminate the current mandatory obligation (nondiscretionary duty) under § 732.17(f)(2) and section 504(a) of

[3] During calendar year 2004, at least seven reauthorization bills (H.R. 3778, H.R. 3796, H.R. 4529, S. 2049, S. 2086, S. 2208, and S. 2211), were introduced in Congress but none were enacted into law. As of August 2005, three reauthorization bills (H.R. 1600, H. R. 2721, and S. 961) have been introduced in Congress but none have been enacted into law.

SMCRA to commence proceedings to substitute Federal enforcement for all or part of an approved State program in the event of a failure on the part of the State regulatory authority to amend its approved State program. The commenters stated that the proposed revisions would significantly erode the accountability of the individual State regulatory programs, and, if adopted, would be in direct and irreconcilable conflict with the intent of Congress. In this regard, one commenter stated, Congress intended that the State regulatory programs approved under sections 503(a)(1)–(7) of SMCRA be maintained, administered, and enforced consistently with the Secretary's regulations and with the Secretary's mandatory obligations under sections 504 and 521 of SMCRA. One commenter stated that the mandatory duty in § 732.17(f)(2) to initiate a Part 733 proceeding follows directly from the mandatory duty in section 504(a)(3) of SMCRA. Where a State fails to make a timely submission of a required program amendment, it has ''failed to * * * maintain its approved State program'' within the meaning of section 504(a)(3). At that point, the commenter stated, section 504(a)(3) does not give the Secretary discretion regarding what to do. It expressly mandates that the Secretary ''shall'' set in motion the process for promulgation and implementation of a Federal program. The commenter stated that the current, mandatory version of § 732.17(f)(2) is faithful to that mandatory statutory duty. The proposed revisions to § 732.17(f)(2), which would make the initiation of a Part 733 proceeding discretionary, would impermissibly conflict with the mandatory duty under section 504(a)(3) of SMCRA.

We disagree. Our revisions to § 732.17(f)(2) do not eliminate the Secretary's mandatory duty under sections 504(a)(3) and 521 of SMCRA. Section 504(a)(3) requires the Secretary to promulgate and implement a Federal program for a State if the State ''fails to implement, enforce, or maintain its approved State program.'' Section 521(b) provides for Federal enforcement of all or part of an approved State program if the Secretary has reason to believe that violations of all or any part of the State program result from a failure of the State to enforce its program effectively. The provisions of section 504(a)(3) are implemented by our regulations at 30 CFR Parts 733 and 736; and the provisions of section 521(b) are implemented by our regulations at 30 CFR Parts 733, 842, and 843. Those regulations are not being revised by this rule.

Our revisions to § 732.17(f)(2) do remove the mandatory requirement to begin Part 733 proceedings solely on the basis of a delinquent State program amendment. We are replacing that requirement with a process that requires a reasoned determination that Part 733 proceedings are warranted. Revised § 732.17(f)(2) will continue to lead to the same proceedings under §§ 733.12(b) and (e) as do the existing regulations in § 732.17(f)(2), but only after the Director has made that determination. By inserting the term ''warrant'' in § 732.17(f)(2), our revisions more closely align the standard for action under § 732.17(f)(2) with the standards of § 733.12(a)(2), ''facts which * * * establish the need for evaluation,'' with the standards of § 733.12(b), ''reason to believe that a State is not effectively * * * maintaining * * * its approved State program,'' and with the factors specified in § 733.13 for determining whether to substitute Federal enforcement.

We do not believe that our revisions will erode the accountability of the individual States. The revised provisions in § 732.17(f)(2) incorporate Part 733 by reference and, therefore, provide for Federal enforcement when required. Section 733.12(a)(1) requires the Director to evaluate the administration of each State program annually, and section 733.12(a)(2) allows any interested person to request a State program evaluation. There remain, therefore, effective safeguards for State accountability.

One commenter stated that our proposed rule implicitly assumes that OSM would not have sufficient ''reason to believe'' that a State is violating SMCRA even though the State has failed to correct the deficiencies in OSM's Part 732 notification for more than 60 days, in violation of the deadline in § 732.17(f)(2). The commenter stated that this is an even more extreme view than OSM took in *West Virginia Highlands Conservancy* v. *Norton*, 161 F. Supp. 2d 676 (S.D. W. Va. 2001). In that case, in the government's June 29, 2001, Memorandum in Support of Its Motion to Dismiss, we stated that:

> When a State fails to correct the deficiencies identified in the Part 732 notification to the State, OSM has reason to believe that the State is failing to effectively maintain its approved program, which is one of the thresholds for taking action under 30 CFR 733.12(b).

We acknowledge that in the past we have taken that position. We took it because the language in existing § 732.17(f)(2) requires the commencement of Part 733 proceedings. Part 733 requires the Director to notify the State in writing ''if the Director has reason to believe that a State is not effectively * * * maintaining * * * its approved State program.'' By implication, therefore, a failure under § 732.12(f)(2) results in ''a reason to believe'' under Part 733. Long experience has shown that if the State fails to meet a deadline or otherwise comply with the requirements of § 732.12(f)(2), there may be reasons for the failure which indicate that the failure is something other than the State's inability or unwillingness to effectively maintain any part of its approved State program. In the past, those reasons have included disagreements with OSM on the interpretation and intent of the program amendment that was submitted, State legislative and regulatory procedures that prohibited the State from complying in a timely fashion, and concerns by the State about complying with a Part 732 notification based on a Federal rule that is being litigated by both the environmental community and the coal industry.

Since 1982, the regulations in Part 733, which implement the provisions of section 504(a) of SMCRA, have used the terms ''effectively'' in §§ 733.12(b) and (e), and ''adequately'' in § 733.12(d) indicating that something less than perfect performance by the State is acceptable. In other words, not all defects in maintenance rise to the level where the Director has ''reason to believe'' that the State is failing to effectively maintain its program. To warrant action under Part 733, something more is needed than the mere failure to meet a timetable. Factors that could raise the defect in maintenance to an unacceptable level might be the importance of the outstanding amendment to the integrity and effectiveness of the State program, the effect its absence is having on the environment and public health and safety, or the lack of any mitigating circumstances for failing to comply with submission requirements. It is precisely because not all defects in maintenance do in fact provide a ''reason to believe,'' and because there may be mitigating circumstances for the noncompliance or delayed compliance by a State that we are revising § 732.17(f)(2) in order to eliminate the irrebuttable presumption that ''reason to believe'' exists within the scope of § 733.12(b).

Two commenters stated that the current rulemaking is proposed against a backdrop of systemic failures, on the part of the Secretary and OSM, to comply with the current regulatory

mandate to commence Part 733 proceedings in the face of a State's refusal to submit required program amendments. To back their assertions, one commenter referred to a situation in the State of West Virginia where the State failed for 10 years to submit a required amendment to adequately fund its bonding program. In that case, citizens sued OSM in Federal court under the citizen suit provisions of section 520 of SMCRA in order to force OSM to take over the West Virginia bonding program. The second commenter referred to an issue in the Commonwealth of Kentucky and alleged that the Commonwealth had refused, over a period of years and in direct defiance of repeated OSM demands, to amend the State program concerning the exemption of public roads from the definition of ''affected area.''

We acknowledge that action under § 732.17(f)(2) has been taken only in limited instances even when the situation may have called for more timely and forceful action. Our reluctance to begin Part 733 proceedings should not be construed as an indication that we took no action to remedy State program deficiencies, because we dedicate considerable resources to oversight and the State program amendment process. Typically, discussions between OSM and the States on program amendments begin before submission, and continue throughout the review process that follows submission of the amendments. The communications, negotiations, and meetings between the State and OSM staff are, in many ways, equivalent to those required in §§ 733.12(b) and (c).[4] If the issues involved in the amendment are complex and/or numerous, the ''back and forth'' between the parties can be extensive.

On September 25, 2000, OSM's Acting Director sent a memorandum (administrative record document no. 22) to OSM's Regional Directors stating that one of the agency's program priorities for Fiscal Year 2001 would be to review individual State programs for any outstanding amendments. The memorandum directed OSM's Regional Offices to survey all State programs to determine what amendments or portions of amendments were outstanding, negotiate specific submission dates with the States, and make those submission dates a part of each State's Fiscal Year 2001 work plan. Since commencement of that initiative, considerable progress has been made in reducing the backlog of outstanding amendments. The fact that OSM considered the amendment issue a program priority for Fiscal Year 2001, and chose to resolve that issue through negotiations with each of the 24 States rather than use the regulatory process established in § 732.17(f)(2), is a further indication of our belief that the § 732.17(f)(2) procedures are not appropriate for all situations in which there is an outstanding program amendment.

The West Virginia bonding issue was one of those situations where more timely and forceful Federal action was called for in order to remedy a longstanding problem with the State's alternative bonding program. OSM did commence a Part 733 proceeding against the State on June 29, 2001, after a citizen lawsuit had been filed. As a result of the Part 733 proceeding and the citizen lawsuit, the State submitted program amendments that remedied problems with the State's alternative bonding program and the Part 733 proceeding was terminated on June 20, 2002. As discussed in greater detail below, nothing in the revision to Part 732 would preclude the filing of a similar citizen suit at any time in the future.

With regard to the Kentucky roads issue, that matter was resolved by a letter dated April 1, 2004, in which we notified the Commonwealth of Kentucky that we had reconsidered our Part 732 letter dated August 22, 1988, that required Kentucky to revise its definition of ''affected area.'' In the April 1, 2004, letter, we concluded that the Kentucky program provisions concerning public roads are currently no less effective than the counterpart Federal provisions. That letter illustrates our contention that unresolved issues with States over delinquent State program amendments do not necessarily indicate an unwillingness or failure on the part of the State to ''maintain'' its approved program. In that instance, there was a legitimate issue of whether any amendment from the State was really required.

One commenter stated that the Part 733 regulations give OSM substantial discretion over how to address deficiencies in the design, enforcement, or implementation of State regulatory programs. The commenter stated that the initiation of a Part 733 proceeding, whether pursuant to § 732.17(f)(2) or because OSM otherwise has reason to believe that a State is not implementing or enforcing its approved program, does not inexorably result in substituted Federal enforcement or ouster of the State as the regulatory authority. The commenter, citing §§ 733.12(e), 733.12(g), and 733.13, stated that, before deciding whether to institute Federal enforcement for all or part of a State program, or to recommend complete or partial withdrawal of the approved State program, OSM must review ''all available information'' and must consider a number of factors. The commenter stated that there is no mandatory duty to take over enforcement or to replace a State program with a Federal program. Those actions may occur only if the Director or the Secretary, in his or her discretion, makes specific findings. See §§ 733.12(e) and (g)(2)(i). The commenter stated that the proposed rule does not explain why the discretion already available under Part 733 is insufficient to allow OSM to avoid any untoward impacts on its relationships with the States.

With regard to the discretion issue, the commenter fails to realize that it is the lack of discretion under § 732.17(f)(2) that is at issue. It is the commencement of Part 733 proceedings, when such proceedings are not warranted by the circumstances, that injures the working relationship we have with the States and wastes both State and Federal resources.

We agree with the commenter that, once a Part 733 action has been initiated and before Federal enforcement may commence, the Director, under § 733.12(e), must be able to find, based upon the review of all available information, that (1) the State has failed to implement, administer, maintain or enforce effectively all or part of its approved State program; and (2) the State has not demonstrated its capability and intent to administer the State program. In most instances, particularly those in which a State has submitted an amendment that we did not approve, it is unlikely that the Director, based upon the record, would be able to make both findings, particularly the second finding that the State has not demonstrated its intent to administer the State program. The commenter's argument clearly illustrates the problem created by the existing regulations. Under § 732.17(f)(2), we are required to begin proceedings under Part 733 even when the facts tend to indicate that the Director does not have ''reason to believe'' under § 733.12(b) and will be unable to make the findings required by § 733.12(e). This is precisely why we propose to revise § 732.17(f)(2) in order

[4] Section 733.12(b)(1) requires the Director to provide the State with sufficient information to allow the State to determine what portions of its program are not being effectively maintained and specify the time period for remedial action. Section 733.12(c) authorizes an informal conference between the parties to discuss the facts or the time period for accomplishing remedial action.

to prevent the Director from having to begin Part 733 proceedings in situations where proceedings do not appear to be warranted by the circumstances.

One commenter stated that the proposed revision is an indirect attack on congressional encouragement of citizen participation in, and enforcement of, SMCRA because citizens can only enforce nondiscretionary duties against OSM and primacy States. Another commenter stated that the true intended effect of the proposed rule is to limit and weaken the citizen suit remedy under SMCRA and that OSM's true agenda is not pro-Federalism, but anti-citizen suit.

OSM disagrees. Our revisions do not in any way prohibit citizens from participating in the enforcement of SMCRA. For example, under § 733.12(a)(2), any interested person may request that the Director evaluate a State program. Section 733.12(a)(2) specifies that:

> Any interested person may request the Director to evaluate a State program. The request shall set forth a concise statement of the facts which the person believes establishes the need for evaluation. The Director shall verify the allegations and determine within 60 days whether or not the evaluation shall be made and mail a written decision to the requestor.

If the concise statement of facts submitted by the interested person establishes the need for an evaluation, the Director must begin proceedings under § 733.12(b), which specifies that:

> If the Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program, the Director shall promptly notify the State regulatory authority in writing. The Director's notice shall—
>
> (1) Provide sufficient information to allow the State regulatory authority to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced;
>
> (2) State the reasons for such belief; and
>
> (3) Specify the time period for the State regulatory authority to accomplish any necessary remedial actions.

Finally, our revisions to § 732.17(f)(2) in no way affect the right of an individual to bring a citizen's suit under section 520(a) of SMCRA which provides in part as follows:

> * * * any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act—
>
> (1) Against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this Act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this title; or
>
> (2) Against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

Under section 520(a), an individual could commence a civil action against OSM if the Director failed to initiate a Part 733 proceeding against a State when such action is warranted based on a review of all available information. It should be noted that, in those situations where the State has submitted an amendment and the amendment either has not been approved or has been approved with a requirement to further amend the program, we publish the requirement to submit a new amendment in the **Federal Register** and codify the requirement in the Code of Federal Regulations (CFR) so that members of the public have notice of the outstanding amendment.[5] At any time, based on the information published in the CFR, an interested party, under § 733.12(a)(2), may request that the Director conduct an evaluation of the State program. In doing so, the requestor need only submit a concise statement of the facts that the person believes establish the need for such an evaluation.

Two commenters stated that OSM must measure the adequacy of State programs on a part-by-part basis and the trigger in Part 732 must be consistent with the remedy in Part 733 which requires that OSM take over Federal administration and partial enforcement if any part of an approved State program is not being maintained or enforced. The commenters stated that, in contrast, the proposed rule would make the Part 732 trigger (*i.e.*, deficient overall State performance) inconsistent with the Part 733 remedy (*i.e.*, takeover of all or part of a State program). The commenters stated that, under the proposed rule, a State could fall well below Federal standards in one part of its program, but avoid a Federal takeover by maintaining adequate ''overall'' performance of its program as a whole. According to the commenters, the proposed rule is therefore inconsistent with the clear language and intent of SMCRA.

[5] Each state is assigned a part number in Title 30 of the CFR, and in that part at section .16, we codify the requirement to submit an amendment. For examples, see 30 CFR 914.16 (Indiana), 948.16 (West Virginia), and 950.16 (Wyoming).

While we disagree with the commenters' analysis, we do agree that the language of the proposed rule should be clarified. We proposed adding the words ''if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing its approved program'', in order to provide the Director with the discretion to determine when proceedings should be started under Part 733. It was our intent under the proposed revision, that the State's failure to submit even a single program amendment by a specific date would be enough to require the Director to begin proceedings under Part 733 if that failure would likely result in a substantial deficiency in just one part of the State program or result in significant on-the-ground impacts, even if all else in the program were in good order. To make this absolutely clear, we are revising the language of the proposed rule by adding the words ''all or part of'' to the final rule. The language of § 732.17(f)(2) will then read as follows: ''if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved program.''

One commenter stated that, in adopting the 1979 permanent program regulations (which contained language similar to the current § 732.17(f)(2) but required submission of the actual State program amendment, rather than a timetable for adoption), OSM rejected the suggestion that the State program amendment process be folded into Part 733. The commenter stated that this is the very outcome now proposed by OSM in adopting the Part 733 standard of overall effectiveness in determining whether to act to sanction a State for a knowing failure to maintain program currency.

We disagree. The comments discussed in the 1979 preamble (44 FR 14902, 14967; March 13, 1979) suggested relocating the amendment process or ''appropriate amendment provisions'' into Part 733 because the amendment process should be part of maintaining State programs, not part of the overall initial State program approval/disapproval process. OSM did not accept the suggestions and stated that ''Part 733 is designed to address the State's actual implementation and administrative efforts.'' Our 1979 response failed to take into consideration that § 733.12(b) specifically uses the term ''maintaining'' and § 733.12(e) uses the term ''maintain.'' It is obvious, therefore, that

one criterion in a Part 733 proceeding for determining State program effectiveness is maintenance, *i.e.*, keeping the State program current through the amendment process. The existing regulations at § 732.17(f)(2), by requiring Part 733 proceedings, incorporate Part 733 by reference thereby linking Parts 732 and 733 together. The rule we are promulgating today is consistent with the understanding that Parts 732 and 733 are linked.

One commenter stated that the Secretary, in proposing to delink the obligation to submit a program amendment from the sanctions of initiation of Part 733 proceedings, violates several aspects of SMCRA, including section 521(b), which is triggered any time that there is ''reason to believe'' that violations are resulting from a failure by the State to enforce a program or any part thereof effectively. The commenter stated that the failure of a State regulatory authority to promptly revise a State program when requested and to maintain program currency is a violation that should trigger a mandatory response by the Secretary. Further, the commenter argued that section 504(a) demands a Federal response when any part of a State program is not being properly administered, precluding the ''overall'' or ''aggregate'' approach being proposed by OSM in the proposed rule.

OSM disagrees. The commenter fails to realize that section 521(b) applies only when the State is failing to enforce its approved program. A delinquent amendment has yet to become part of the approved program, therefore, action under section 521(b) is inappropriate. With regard to the provisions of section 504(a) requiring promulgation and implementation of a Federal program for a State, those provisions are implemented by the regulations in Parts 733 and 736 and their application has been previously discussed in response to a similar comment.

One commenter stated that, with regard to the language in revised § 732.17(f)(2) which specifies that ''the Director must begin proceedings under 30 CFR part 733 if the Director has reason to believe that such action is warranted,'' the belief of the Director should be documented in writing within a given time frame.

We agree. The Director's reason to believe would be documented when the Director sends notification to the State pursuant to § 733.12(b)(1) which requires the Director to provide sufficient information to allow the State regulatory authority to determine what portions of the State program the Director believes are not being effectively implemented, administered, maintained, or enforced, and state the reasons for such belief.

One commenter stated that the reason proffered for removing the existing provisions is not a legitimate basis for action and is contrary to legislative intent. According to this commenter, even if we assume that the administrative record demonstrated that the existing regulatory framework has been unduly disruptive or costly, nowhere in the legislative history of SMCRA is administrative inconvenience or cost of implementation a value permitted to be considered, or a value to be exalted over the goals of assuring consistent implementation of SMCRA among the States. Instead, the commenter stated, throughout the legislative history and structure of SMCRA, the overarching goal of assuring consistency in adoption and implementation of SMCRA comes through.

We disagree. Federal rulemaking is governed by numerous provisions in addition to those found in SMCRA. For example, sections 3(f) and 6(a)(B) and (C) of Executive Order 12866—Regulatory Planning and Review (58 FR 51735; October 4, 1993), require a consideration of the costs and benefits in the development of regulations as well as their impacts on grants and the recipients thereof. Because Federal budgets are prepared two years in advance; the commencement of unanticipated Part 733 proceedings could result in funding shortfalls even if such proceedings did not result in Federal enforcement, and, therefore, should not be undertaken without regard for costs or the necessity of the action. Under the current regulations, OSM is required to begin a Part 733 proceeding if there is a delinquency of even one day. We think it prudent to allow more discretion to determine when to commence a Part 733 proceeding.

One commenter criticized our justifications for the proposed rule and stated that, despite the fact that the mandatory language in § 732.17(f)(2) has been on the books for nearly 25 years, OSM now contends that there is a problem with § 732.17(f)(2), namely that it is too disruptive. The commenter stated that the proposed rule mentions two varieties of disruption: (1) The ''substantial disruption to the State, the Federal government, and the coal industry that results from the substitution of Federal enforcement,'' and (2) interference with ''the working relationship OSM has with a State.'' The commenter recounted OSM's history regarding Part 733 proceedings in which OSM did take over partial enforcement of a State program and stated that there is no current problem with substituted Federal enforcement, and even if there is, it does not result from the fact that initiation of Part 733 proceedings required under § 732.17(f)(2) is mandatory. The commenter further stated that, to the extent the proposed rule is intended to avoid the substantial disruption of substituted Federal enforcement, it is a non-solution to a non-problem. Another commenter criticized our statement that a Part 733 proceeding as required by § 732.17(f)(2) damages the working relationship we have with a State that has voluntarily agreed to work in partnership with OSM to implement and administer the provisions of Title V of SMCRA. The commenter stated that OSM did not and is unable to present a single example supporting this assertion. The commenter stated that, in 26 years, OSM has initiated just nine Part 733 actions and that the rarity of these actions and the extreme rarity of Part 733 actions initiated pursuant to § 732.17(f)(2) show that proceedings initiated under § 732.17(f)(2) have not created problems with Federal-State relationships. The commenter further stated that OSM should not be wasting its resources and rulemaking efforts on hypothetical problems for which there are no real world examples and that without real world examples one cannot determine whether the proposed amendment or some other course of action is the proper solution.

We disagree. The potential for unwarranted disruption exists as long as the requirements of existing § 732.17(f)(2) remain unchanged. Section 732.17(f)(2) requires us to automatically initiate Part 733 proceedings without taking into consideration an individual State's effectiveness in maintaining its approved program. Had OSM initiated a Part 733 proceeding each time a minor State program amendment was delinquent by even one day, as required by § 732.17(f)(2), the disruption in Federal-State relations would have been significant and the complaints from the States and Congressional delegations noticeable. While the examples of Part 733 actions given in the proposed rule (Tennessee and Missouri) did not result from actions commenced as a result of § 732.17(f)(2), they do provide an illustration of the disruptive effects resulting from the substitution of Federal enforcement.

Eliminating the requirement to automatically begin Part 733 proceedings when the circumstances

surrounding a delinquent State program amendment do not warrant such action, will help us preserve the positive working relationship we have developed with State regulatory authorities over the years. The revisions are also consistent with the requirements of Executive Order 13132 on Federalism (64 FR 43255; August 10, 1999). Section 3(c) of Executive Order 13132 states that ''[w]ith respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.''

One commenter stated that, if OSM had a reputation for strictly complying with its mandatory duty under § 732.17(f)(2), the disincentive of a Part 733 proceeding would spur States to comply with the program amendment submission deadlines in § 732.17(f)(1). Conversely, the failure of States to take the 60-day submission deadline seriously may simply be a symptom of OSM's failure to abide by its mandatory duty under § 732.17(f)(2).

We cannot say if strictly complying with the mandatory requirements under § 732.17(f)(2) would have resulted in all States consistently meeting the timelines for submitting a State program amendment. Each State's rulemaking process is different; one State may require its rules to be approved by its State legislature while another State does not. It is just as likely that, had we initiated a Part 733 proceeding when there was a delinquent State program amendment, the State might have shifted resources from a higher priority issue in order to prepare for the informal conference authorized under § 733.12(c) or the public hearing under § 733.12(d), or decided that, given the number of amendments being required and the time allowed, it would be better for the State to give up its regulatory program.

What are the revisions to §§ 732.17(h)(1)–(13) and what were the comments submitted?

Section 732.17(h)(1)

Paragraph (h)(1) currently requires that we publish in the **Federal Register** a notice of receipt of a State program amendment within 10 days after receiving it from the State. We propose increasing the time from 10 days to 30 days because we have found it nearly impossible to meet the 10-day time period. When the regulations were originally written, State program amendments were received and processed at OSM's Headquarters in Washington, DC. In 1995, the authority to process State program amendments was delegated to OSM's three regional offices so that they could work more closely with the States in their regions. This has increased the amount of time needed to obtain final clearance from the Washington office for publication in the **Federal Register**. Also, the Office of the Federal Register needs four days after receipt to schedule the publication of proposed and final rules. That leaves only six days for OSM's regional offices to draft a **Federal Register** notice and transmit it by mail to the Washington office for additional clearance prior to publication.

One commenter was opposed to the extension of the 10-day period to 30 days as being unnecessary and unjustified. The commenter stated that it is ironic that, in an era of simultaneous electronic submission of data, the agency has become less capable of timely transmitting and processing of information.

We disagree. While most documents can be transmitted electronically, the Office of the Federal Register still requires three hard copies of a document with an original signature which means that the document needs to be hand carried or mailed to the Office of the Federal Register. The Office of the Federal Register is in the process of initiating a pilot program using electronic signatures, but for the time being we are required to transmit paper documents with original signatures. In addition, the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*) require us to file a copy of each final rule with both houses of Congress and with the Comptroller General. The rule cannot take effect until this requirement is met, and the filing requirement adds to the time it takes to publish a document.

Section 732.17(h)(2)(v)

Paragraph (h)(2)(v) currently requires that we publish a schedule for review and action on a State program amendment. Experience has shown that schedules usually change because of extensions of the comment period and delays in obtaining comments from other government agencies. Because these schedules are variable and unreliable, we are removing the requirement. No comments were received on this revision.

Section 732.17(h)(8)

Paragraph (h)(8) currently allows the State regulatory authority 30 days to submit a revised amendment for consideration if its original submission is not approved. Experience has shown that 30 days is insufficient time for the State to accomplish the submission. Because of this, we are increasing the time frame from 30 days to either 60 days or, if more time may be needed by the State, by a date specified by the Director after considering the circumstances of the situation and the established administrative or legislative procedures in the State in question. This will provide the State with a more realistic time frame within which to act.

In the proposed rule, we included the following sentence in paragraph (h)(8): ''If no submission is made, then the Director must follow the procedures specified in paragraph (f)(2) of this section.'' This language was added for clarity in order to tie the provisions of § 732.17(h)(8) to § 732.17(f)(2). However, as discussed in the analysis of § 732.17(f)(2), our decision not to approve a provision of a proposed State program amendment does not necessarily mean that the approved State program is less stringent than the Act or less effective than the Federal regulations. This is most likely to be true with respect to proposed amendments that the State submits on its own initiative. In those situations where we decide not to approve a proposed amendment and the lack of approval does not result in a situation in which the approved State program no longer meets Federal requirements, there is no reason to require that the State resubmit a revised amendment. Consequently, we are not including the proposed sentence in the final rule. We have also slightly revised the first sentence of paragraph (f)(2) to conform to the elimination of the second sentence; i.e, to clarify that submission of a revised amendment is not always necessary following an OSM decision to not approve a proposed State program amendment.

Two commenters requested that the time frame in § 732.17(h)(8) be extended from 60 to 90 days to allow even more time for submitting a revised amendment. We did not accept the suggestion because the rule provides sufficient flexibility to address situations in which 60 days is inadequate.

One commenter objected to certain language added to § 732.17(h)(8) in the proposed rule. The language objected to reads as follows: ''or a time frame consistent with the established administrative or legislative procedure in the State, whichever is later.'' The commenter stated that, as drafted, the language makes it impossible to tell

when a State's submission of a revised program amendment is due. The commenter suggested that we remove the language ''or a time frame consistent with the established administrative or legislative procedure in the State, whichever is later.'' As an alternative to that language, the commenter proposed that § 732.17(h)(8) authorize the Director to specify, at the time he issues his disapproval of a State program amendment, an alternative date to the 60-day deadline. This alternative date would be based on the circumstances and the Director's familiarity with the practices of the State in question and the deadline would be clearly stated in the notice of disapproval either as a date certain or as a specific number of days from the publication of the notice of disapproval.

We have accepted the commenter's second suggestion. We had proposed revising § 732.17(h)(8) in order to take into consideration an individual State's established administrative or legislative procedures and to provide the State with a period of time that considers those procedures. It was not our intention to leave the deadline for submitting the revised amendment completely indeterminate. The commenter's suggestion is consistent with our intent and we have, therefore, revised § 732.17(h)(8) to adopt the suggestion that the revised rule require that the Director specify a date by which the State must submit a revised amendment.

Section 732.17(h)(9)

Paragraph (h)(9) is being shortened and simplified by cross referencing the processing provisions in paragraph (h) rather than reiterating the procedures specified in paragraph (h)(9). No comments were received on this revision.

Section 732.17(h)(12)

Paragraph (h)(12) currently requires that, within 10 days after approving or not approving a State program amendment, the decision must be published in the **Federal Register.** We propose increasing the time period from 10 days to 30 days for the same reasons as discussed for the revisions of paragraph (h)(1) above. See our previous response to comments submitted on this same issue in our revisions to § 732.17(h)(1).

Section 732.17(h)(13)

We revised paragraph (h)(13) by deleting the cross reference to the schedule in paragraph (h)(2)(v) because, as previously discussed, we deleted that paragraph. We also revised the time frame for our final decision on a State program amendment by increasing the time allowed from six months to seven months to allow for the increase in time from 10 to 30 days to publish documents in the **Federal Register.**

One commenter stated that, for State-initiated program amendments, the State would like to see a time frame for review and decision by OSM that is less than the seven months allowed for an amendment required by OSM.

We decline to accept the commenter's suggestion. We increased the time period for processing from six months to seven months to accommodate the additional time needed to publish documents. The time needed to publish a document remains the same whether the amendment is initiated by OSM or the State.

With regard to the processing times specified in the regulations, the general rule is that a statutory or regulatory time period is not mandatory unless it both expressly requires an agency to act within a particular time period and also specifies a consequence for failure to comply. This is true even if the term ''shall'' is used. Where no such consequence is specified, the time period is regarded as directory only, intended to guide the agency procedures but not to set inflexible requirements. *See, Holland* v. *Pardee Coal Co.,* 269 F.3d 424, 432 (4th Cir. 2001); *In re Siggers,* 132 F.3d 333, 336 (6th Cir. 1997). Each State program amendment is unique and deals with legal and technical issues of various complexity. Because of this, each amendment requires a different period of time to process. The six month time period was chosen in 1979 because that was the time allowed in section 503(b)(4) of SMCRA for the Secretary to approve or disapprove a State program. We thought a similar time period would be appropriate for all State program amendments, but that has not been the case. While the time frame for processing a State program amendment is directory in nature, we will endeavor to process all amendments in the shortest amount of time possible.

One commenter stated that there should be a conflict resolution process to resolve an impasse when no decision has been made on a submitted program amendment after seven months.

We did not accept the suggestion. If OSM has not made a decision on the amendment within six months (and we acknowledge that that happens), it is because there are significant issues that have to be resolved. During the initial months following submission, there is considerable discussion between the OSM Regional Office, the OSM Field Office with jurisdiction over the State, the Interior Department legal staff, and the State itself to resolve issues and reach decisions. This discussion is in the nature of a conflict resolution process. If the issues are complicated and/or numerous, the back and forth between OSM and the State can well exceed six months—especially if an issue letter has been sent to the State. If a decision cannot be reached at the staff level, then the Regional Director, acting under authority delegated by the Director, makes a decision. Unfortunately, complicated issues cannot always be resolved in six months (the current time frame). We note that the time for processing a State program amendment varies from State to State and is often influenced by the degree to which the State's submission varies from the Federal rule. Those States that adopt the Federal rule unchanged have shorter processing times than those States that submit variations of the Federal rule for approval.

One commenter stated a preference for the term ''disapprove,'' currently found in paragraph (h)(8), rather than our revision which uses the term ''not approve.'' The commenter stated that no explanation for this change was provided in the preamble to the proposed rule.

We revised the language in paragraph (h)(8) and (h)(9) in order to conform it with language contained in § 732.17(f)(2).

One commenter requested that we add a procedure that allows for submittal of clarifications of program amendments without extending the processing time specified in (h)(13).

We did not accept the commenter's suggestion. If the response submitted by the State is nothing more than a clarification, then the processing time would not be extended. If the response submitted by the State results in a significant change in the interpretation of the amendment, it could result in an extension of the processing time if we are required to reopen the comment period.

One commenter stated that he would like to see a procedure that allows for program amendments that have no Federal counterpart or are outside the scope of SMCRA to take effect immediately upon publication of the initial **Federal Register** notice. Also, the commenter stated he would like to see a procedure that allows for program amendments that adopt Federal rules verbatim to take effect immediately upon publication of the initial **Federal Register** document.

We did not accept the suggestion. A similar concept was considered by OSM

in a 1981 proposed rule and rejected. The rule would have provided for ''automatic approval'' of an amendment unless we notified the State within 60 days of the receipt of the amendment that the amendment should be subject to the usual notice and comment procedures for processing State program amendments. In the final rule (47 FR 26356, 26361; June 17, 1982), we stated that ''OSM has carefully reviewed all of the comments received on this proposed rule and has determined that the public participation requirements of the Act and rulemaking requirements of the APA [Administrative Procedure Act] preclude approval of amendments without some procedure for public notice and comment.'' We believe that the requirement for public participation is applicable to the types of amendments suggested by the commenter.

III. Procedural Matters and Required Determinations for This Rule

Executive Order 12866—Regulatory Planning and Review

This document is considered a significant rule under Executive Order 12866 and is subject to review by the Office of Management and Budget. Based on the discussion in the preamble, and the following information, it has been determined that:

a. The rule will not have an annual effect of $100 million or more on the economy, and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The rule is procedural in nature and will not impose any new compliance costs on the coal industry or State governments. Its anticipated benefits are difficult to monetize because they result primarily from the potential administrative costs savings to the Federal government that ensue when the Federal government is not required to immediately begin Part 733 proceedings for minor State program deficiencies. While the rule's benefits are difficult to monetize, OSM does not expect the rule to result in more than $100 million per year in cost savings. If we assume, for the purpose of illustration, that every State that has primacy had a minor deficiency which OSM would determine does not warrant further action under this rule, the rule could potentially save the costs of a hearing or $2,650 per State, or $63,600 total (24 primacy States × $2,650 hearing cost per State). However, even in those situations where a Part 733 action is initiated, the matter may be resolved prior to going to the hearing stage. Nevertheless, even if the potential savings would not be fully realized, OSM believes this rule should be adopted because the flexibility it provides will allow OSM to determine which deficiencies are substantive and warrant the expense involved in holding formal proceedings including hearings and which can be better addressed through informal means.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule may raise novel legal or policy issues which is why it is considered significant under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not affect small entities. The revisions to Part 732 will affect the manner in which program amendments submitted by the States (currently 24) with approved State programs are processed. As previously stated, the revisions are not expected to have an adverse economic impact. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The revisions are procedural in nature and do not affect private property.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions pertaining to actions under Part 733 would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The revisions to the provisions governing the processing of State program amendments and the time frames for their publication will not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

This rule does not alter the information collection requirements currently approved for Part 732.

Therefore, approval by the Office of Management and Budget is not required.

National Environmental Policy Act

OSM has determined that this rulemaking action is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332 *et seq.* In addition, we have determined that none of the ''extraordinary circumstances'' exceptions to the categorical exclusion apply. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendixes 1.9 and 2).

How Will This Rule Affect State Programs?

Following publication of a final rule, we will evaluate the State and Indian programs approved under section 503 of SMCRA to determine any changes in those programs that may be necessary. When we determine that a particular State program provision should be amended, the State will be notified in accordance with the provisions of 30 CFR 732.17. We have made a preliminary determination that no State program revisions will be required.

List of Subjects in 30 CFR Part 732

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: August 11, 2005.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, we are amending 30 CFR part 732 as set forth below.

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

■ 1. The authority citation for part 732 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

■ 2. Section 732.17 is amended by:
■ a. Revising paragraphs (f)(2), (h)(1), (h)(8), (h)(9), (h)(12), and (h)(13);
■ b. Amending paragraph (h)(2)(iv) by removing ''; and'' at the end of the paragraph and adding a period in its place; and
■ c. Removing paragraph (h)(2)(v).

The amendments read as follows:

§ 732.17 State program amendments.

* * * * *

(f) * * *

(2) If the State regulatory authority does not submit the information required by paragraph (f)(1), or does not subsequently comply with the submitted timetable, or if the resulting proposed amendment is not approved under this section, then the Director must begin proceedings under 30 CFR part 733 if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved State program.

* * * * *

(h) * * *

(1) Within 30 days after receipt of a State program amendment from a State regulatory authority, the Director will publish a notice of receipt of the amendment in the **Federal Register**.

* * * * *

(8) If the Director does not approve the amendment request, the State regulatory authority will have 60 days after publication of the Director's decision to submit a revised amendment for consideration by the Director. If more time may be needed by the State to submit a revised amendment, the Director may grant more time by specifying in the decision, a date by which the State regulatory authority must submit a revised amendment. The date specified in the Director's decision should be based on the circumstances of the situation and the established administrative or legislative procedures of the State in question.

(9) The Director will approve or not approve revised amendment submissions in accordance with the provisions under paragraph (h) of this section.

* * * * *

(12) All decisions approving or not approving program amendments must be published in the **Federal Register** and will be effective upon publication unless the notice specifies a different effective date. The decision approving or not approving program amendments will be published in the **Federal Register** within 30 days after the date of the Director's decision.

(13) Final action on all amendment requests must be completed within seven months after receipt of the proposed amendments from the State.

[FR Doc. 05–21025 Filed 10–19–05; 8:45 am]

BILLING CODE 4310–05–P

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Thursday,
October 20, 2005

Part IV

The President

Notice of October 19, 2005—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

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Presidential Documents

Title 3—

The President

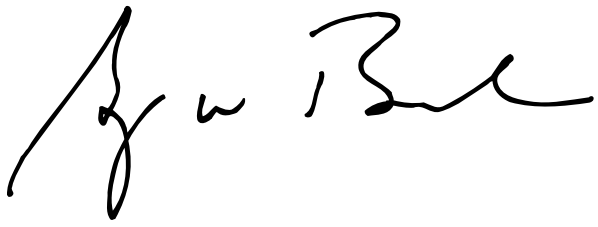
Notice of October 19, 2005

Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The order blocks all property and interests in property of foreign persons listed in an annex to the order that are in the United States or within the possession or control of U.S. persons, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
October 19, 2005.

[FR Doc. 05–21210
Filed 10–19–05; 1:08 pm]
Billing code 3195–01–P

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